Hastings Women's Law Journal

Volume 16
Number 1 *Winter 2004*

Article 3

1-1-2004

Lighting the Lantern: Visions of a Virtual All-Women's Law School

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by Nancy E. Shurtz[*]

"Now, what peculiarly signalizes the situation of woman is that she — a free and autonomous being like all human creatures — nevertheless finds herself living in a world where men compel her to assume the status of the Other."

– Simone de Beauvoir[1]

[I know from my experience both as a law student and as a teacher in a public university law school that the promise of equal opportunity for women cannot be satisfied solely through efforts to treat women "the same" as men. In a world in which the key positions of power in the profession (law firm partners, judges) and the academy (law school deans, tenured full professors) are overwhelmingly men, the process of preparing women for professional life as lawyers has been tantamount to a mission to turn women functionally into men. I therefore believe that an all-women's law school may be a vital wellspring from which young women may claim their true identities, speak with their natural voices, and see the world with a fresh unfiltered light. As a woman resident in the world of law, I have visions of how I would like to see this world transformed. The vision of an all-women's law school is a metaphor for what we as women are striving for in the world: a sense of individual and collective identity, access to and expression of our power and initiative, and contribution to a just, fair, and integrated human and world community.]

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1. SIMONE DE BEAUVOIR, THE SECOND SEX, at xxxv (H.M. Parshley ed. & trans., Vintage Books 1989) (1949).

ARRIVAL

I began my first day as a student at the American All-Women's Law School,[2] excited by the proposition that I was beginning a new chapter in my life.[3] The bus traveled the suburban Maryland landscape with

2. This is a controversial topic and different arguments can be made for or against all women's law schools based on different "feminist" viewpoints, in particular "equality" theory vs "difference" theory. *See* Nancy E. Shurtz, *Gender Equity and Tax Policy: The Theory of "Taxing Men,"* 6 S. CAL. REV. L. & WOMEN'S STUD. 485, 486 n.7 (1997) (setting forth various feminist theories). *See generally* Jennifer Gerarda Brown, *"To Give Them Countenance": The Case for a Women's Law School*, 22 HARV. WOMEN'S L.J. 1, 2 (1999) [hereinafter Brown, *Countenance*] (arguing than an all-women's law school "is precisely what some women need to reach their full potential as law students and as lawyers"). Note, however, that in Jennifer Gerarda Brown's latest article she states that "rather than completely excluding men, a feminist law school could carefully screen students to admit only the male students who are unlikely to dominate class or harass female students." *APOSTASY?*, 75 CHI.- KENT L. REV. 837, 843 (2000) [hereinafter Brown, *APOSTASY?*]; *see also* Shannan N. Ball, *Separate But Equal Is Unequal: The Argument Against an All-Women's Law School*, 15 NOTRE DAME J.L. ETHICS, & PUB. POL'Y 171, 171 (2001) (rebutting Brown's arguments in the Harvard article and arguing for legal education "where both men and women learn in the same classroom"); Deborah L. Rhode, *Association and Assimilation*, 81 NW. U. L. REV. 106, 145 (1986) (pointing out that the central objectives of women are "to attain equality without relinquishing difference, and to ascend the hierarchy without losing commitment to change it"). The issues of same-sex schools or classes on the elementary and secondary level are slightly different. *See generally* Tara Boland, *Single-sex Public Education: Equality Versus Choice*, 1 U. PA. J. CONST. L. 154 (1998) (explores the Supreme Court's Equal Protection standard for single-sex public schools and their growing popularity); Kristen J. Cerven, *Single-sex Education: Promoting Equality or an Unconstitutional Divide?*, 2002 U. ILL. L. REV. 699 (2002) (examining same-sex public school programs in Harlem, Chicago and California in light of constitutional standards).

Some studies have shown that graduates of all-women's colleges are more likely to succeed than those graduates of co-educational institutions. *See* Robert E. Ledman et al., *Successful Women and Women's Colleges: Is There an Intervening Variable in the Reported Relationship?*, 33 SEX ROLES 489 (1995); ROBERT GRANFIELD, THE MAKING OF ELITE LAWYERS: VISIONS OF LAW SCHOOL AT HARVARD AND BEYOND 94, 106-08 (1992) (examines "equity feminists" and "social feminists" and contrasting experiences of law school); Robert Granfield, *Contextualizing the Different Voice: Women, Occupational Goals and Legal Education*, 16 LAW & POL'Y 1 (1994) [hereinafter Granfield, *Contextualizing the Different Voice*] (examining gender difference among students at Harvard Law School, demonstrating that differences depend on such factors as occupational goals, social class, and race).

Different organizations, such as the National Organization of Women and the American Civil Liberties Union claim that same-sex schools violate Title IX, the federal law prohibiting discrimination by gender, and run afoul of the 14th Amendment to the Constitution, which guarantees equal protection under the law. *See* S.F. CHRON., July 14, 1997; Christine B. Whelan, *Singles*, NAT'L REV., Sept. 14, 1998, at 34-36. These issues are discussed *infra* note 86.

3. Female enrollment at the nation's law schools is on the rise. The 2001-2002 academic year was expected to be the first where women outnumbered men but, according to the American Bar Association, women accounted for 49.4 percent of the entering class, the same as the year before. *See* News Release, American Bar Association, First Year Law School Enrollment Increases; Gain Among Men Slightly Higher Than for Women (Mar. 12, 2002), *at* http://www.abanet.org/media/mar02/lawschoolstats0302.html. "Women were 46

surprising ease that Monday morning, most likely because nearly all of the traffic flowed in the other direction — towards the Washington, D.C., Beltway. The seamless droning of the bus engine promised a smooth transit to my ultimate destination; but the ride also seemed in harmony with the monotonous terrain, which was dominated by mini-malls, espresso stands, and an infinitude of identical rooftops that stretched to the horizon.

Without warning, the bus crossed a broad, tree-lined boulevard and exited the suburban desert. The village I entered was one of the few planned communities in the D.C. metropolitan area and, in comparison to the prior landscape, was a fertile oasis. Trees and green space lined the major streets, which were few. Bike lanes and pedestrian walkways supplanted convenience stores. Billboards and neon monuments to commercialism were absent. Parking lots were clustered around public transit stations. City Hall, the public safety authority, the municipal court and the public library were all located in an attractive park-like campus, adjacent to a *real* park replete with a botanical garden, amphitheater and band shell; beyond this lay my new campus.

I stepped off the bus at the front entrance, a structure marked by an elegant arched gate of iron and stone. The structure, the Campus Safety Hut, contained trained personnel who greet visitors and regulate entry into the secured campus.[4] Magnificent trees lined the perimeter of the scene

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percent of the entering class at Harvard Law School [in 2000-2001], 44 percent at Stanford Law School, 51 percent at Columbia Law School and 50 percent at New York University School of Law." Jonathan D. Glater, *Women Are Close to Being Majority of Law Students*, N.Y. TIMES, Mar. 26, 2001, at A1. The proportion of entering law students nationwide has reached 44 percent female, and many schools are now half male and half female. Jane Easter Bahls, *You've Come A Long Way Baby, But —*, A.B.A. STUDENT LAWYER, Sept. 1996, at 21. *See also* Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313 (2000).

Female enrollment at the nation's 84 women's colleges has also increased — up 24% from 1990 to 1995. Amy Pyle, *Women-Only Decision Works for Mills College*, L.A. TIMES, Feb. 6, 1995, at A1. Many prominent women are graduates of all-women's undergraduate colleges — Hillary Clinton is most notable, as well as "one quarter of U.S. Congresswomen and a third of the 50 women dubbed rising stars in corporate America by Business Week magazine." *See id.*

Some women law school graduates, however, have difficulty getting jobs and making partner in the largest and highest paying law firms. DEBORAH L. RHODE, A.B.A. COMM'N ON WOMEN IN THE PROFESSION, THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION 5 (2001) (Women attorneys "account for only about fifteen percent of federal judges and law firm partners, ten percent of law school deans and general counsels, and five percent of managing partners of large firms. On average female lawyers earn about $20,000 less than male lawyers."). *See also* Jacquelyn H. Slotkin, *Should I Have Learned to Cook? Interviews With Women Lawyers Juggling Multiple Roles*, 13 HASTINGS L.J. 147 (2002) [hereinafter Slotkin, *Should I Have Learned to Cook?*] (interviewing sixteen lawyers in San Diego and examines conflict among career, family and community roles).

4. Ensuring physical safety and establishing a climate of security are major areas of concern for women on college campuses. *See* M. AMIR, PATTERNS OF FORCIBLE RAPE 1 (University of Chicago Press 1971). About 1 in 14 women will be the victim of rape during their four year stay at an American university or college. *See* Brian Carnell, *Rape on*

before me, largely obscuring the imposing but attractive wrought-iron fence which marked the boundaries of the school, shadowing their line to the outside. "It extends around the entire campus," the woman at the Campus Safety Hut said as she checked my identification, "and with us checking everyone coming in, you can feel safe walking anywhere on this campus, even at night." As she pointed to the path that would lead me to the main campus, the woman further explained that vehicular traffic was minimal. "The campus is small enough to get anywhere on foot, but don't worry about feeling cramped, there's plenty of private space, especially this time of year," she assured me.[5]

After checking in, I turned my attention to the rest of the campus,[6] the former farmland of a prominent Maryland family. The land was purchased some years before by the law school's founders, a nonprofit organization that established the law school.[7] Having at one time been a working

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Campus: 1 in 33 (Feb. 19, 2001), *available at* http://www.equityfeminism.com/articles/2001/000018.html. Large numbers of rapes go unreported. *See*; Renee L. Binder, *Why Women Don't Report Sexual Assault*, 42 J. CLINICAL PSYCHIATRY 437-38 (1981) (citing a questionnaire of female students and faculty at a university campus which revealed that only 18% of adult women's rapes are reported); Donna J. Benson & Gregg E. Thomson, *Sexual Harassment on a University Campus: The Confluence of Authority Relations, Sexual Interest and Gender Stratification*, 29 SOCIAL PROBLEMS 236-51 (1982); Edward S. Cheng, *Sexual Harassment from the Courtroom to the Classroom*, 7 UCLA WOMEN'S L.J. 263 (1997) (discussing student-to-student in-school sexual harassment in light of Title VII and Title IX); Jennifer R. Hagan, *Can We Lose the Battle and Still Win the War?: The Fight Against Domestic Violence After the Death of Title II of the Violence Against Women Act*, 50 DEPAUL L. REV. 919 (2001) (arguing that there is still a need for this type of legislation and that Title III of the VAWA should be reenacted under the 13th Amendment because it incorporates domestic violence by addressing private actions and prohibiting all forms of slavery and servitude); Chris Rauschi, *Violence Against Women, Commerce and the 14th Amendment*, 81 MINN. L. REV. 1601 (1997) (discussing the Violence Against Women Act of 1994 and whether Congress has the ability to enact legislation to protect victims of gender-based crimes under the Commerce Clause or Section 5 of the 14th Amendment); Geraldine Sealey, *Rape on Campus* (Jan. 26, 2001), *available at* http://abcnews.go.com/sections/us/DailyNews/campusrape010126.html.

5. The law school starts in July because the orientation takes eight weeks.

6. The American All-Women's Law School in this story is free-standing, i.e., unattached to a university or college. *See* Brown, *Countenance*, *supra* note 2, at 33 (citing AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REVIEW OF LEGAL EDUCATION IN THE UNITED STATES 4-65 (1994)). "Of the 180 law schools approved by the American Bar Association, only 13 are free-standing. A much higher percentage of unaccredited law schools are free-standing." *Id.* (citing OFFICE OF THE CONSULTANT TO THE AMERICAN BAR ASSOCIATION, STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS, at 16-18, 48-51). "Without the resources of a larger university to support it, a women's law school would struggle to meet ABA standards, particularly with respect to the library." *Id.* "Standard 210 states, 'If a law school is separate . . . it should take appropriate measures to supply the advantages of the University affiliation, for example, by providing a more extensive library, particularly on non-legal subjects." *Id.* at 33 n.155. *See also* Mark Bartholomew, *Legal Separation: The Relationship Between the Law School and the University in the Late Nineteenth Century*, 53 J.L. ED. 368-403 (2003).

7. The issue of whether this school will be private or public will be discussed *infra* note 85.

concern in agriculture and horse breeding, the campus was endowed with both ample acreage and the substantial infrastructure of the former farm. The main building was the old family home, a handsome two-story structure of considerable expanse, constructed principally of rough-hewn stone made more rustic and picturesque by a thick growth of ivy clinging to it. The line of the upper floor was defined by a series of gabled windows offering elegance to the profile. The main structure was flanked east and west by wings of impressive dimension, which, despite their grand scale, were thoughtfully recessed and contoured, creating charming garden-like courtyards in both the front and rear of the house.[8] This main structure included the classrooms, library, professors' offices, administration, and a day care center.[9]

Beyond this I could see numerous pathways leading to the other buildings of the estate, including the living spaces and hobby areas.[10] Although retaining an appearance in harmony with the character as a whole, each space was modified to fulfill its new function. Athletic facilities and a children's playground were incorporated into the campus. The overall effect was I felt I had entered a village,[11] a sensation made even

8. For a law school that caters exclusively to women, the female sense of sisterhood is a vital ingredient in every respect, including the architecture of the buildings and grounds that make up the campus. *See* AARON BETSKY, BUILDING SEX 179 (William Morrow & Co. 1995). Moreover, it is crucial that the first impression of the law school be a heartfelt expression of what it means to be a woman.

9. Law schools need to be the starting point to making law "family friendly," so that the profession as a whole will follow. Andrea Sachs, *Desperately Seeking Daycare: The Secret Lives of Women Lawyers*, 79 A.B.A. J. 58, 61 (1993) (Law schools, and the legal profession as a whole, need to realize that primary family responsibilities, especially child care and housework, still fall on the shoulders of women, and thus a law school should strive to acknowledge and accommodate these added duties.); Karen B. Czapanskiy & Jana B. Singer, *Women in the Law School: It's Time for More Change*, 7 LAW & INEQ. 135, 142 (1988) (stating that women retain the primary responsibility for child care and ensuring women's full participation in the legal profession requires that law schools accommodate these responsibilities by providing affordable day care either on or near the campus); *see* Slotkin, *Should I Have Learned to Cook?*, *supra* note 3 (summarizing and analyzing a survey of female lawyers who experience role conflicts from combining careers, family and community responsibilities); Faith Seidenberg, *A Neglected Minority — Women in Law School*, 10 NOVA L. REV. 843, 944 (1986).

10. Law schools are known for their stressful environment but this law school's focus is on balance and commitment to community. *See* G. Andrew H. Benjamin, Alfred Kaszniak, Bruce Sales, & Stephen B. Shanfield, *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. B. FOUND. RES. J. 225, 248-49 (1986) (asserting that students abandon important aspects of their lives because of stress from work and pressure to get good grades). *See also* Connie J.A. Beck, Bruce D. Sales, & G. Andrew H. Benjamin, *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J.L. & HEALTH 1, 1 (1995-96) (using self-reported survey data and other information to show that "the professional and the personal well-being of lawyers is in serious jeopardy."). At the All-Women's Law School, there are no grades. *See* discussion *infra* note 135-138.

11. Feminists "view society as a network of interacting human beings whose humanity drives and inspires them to help, support and enhance other people." Eleanor M.

more remarkable by the realization that I was just a stone's throw away from the nation's capital.

MY DECISION

As I continued walking throughout the campus, I reflected on the search that led me to this extraordinary school. I was accepted to all of the three law schools I applied to: American All-Women's, a state school (the University of Oregon) and an elite private school (the University of Pennsylvania). I researched the three schools and found that all three were attractive, but in different ways. Having had ten years of paralegal experience at a prestigious law firm, I recognized the advantages and disadvantages of going to a school simply because of its ratings. Many of the associates I worked with had become good friends and provided me with valuable advice on what to look for when choosing a law school. Whereas many of the male associates and partners advised me to value school ranking above all other considerations, several female associates urged me to consider gender issues when selecting the appropriate legal learning environment.[12]

Fox, *Being a Woman, Being a Lawyer and Being a Human Being — Women and Change*, 57 FORDHAM L. REV. 955, 960 (1989). Additionally, cultural feminism begins with a commitment to the existential and psychological consequences of feeling connected to the other. "[W]omen have a 'sense' of existential 'connection' to other human life which men do not. That sense of connection in turn entails a way of learning, a path of moral development, an aesthetic sense, and a view of the world and one's place within it which sharply contrasts with men's." Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1, 15 (1988) ("According to cultural feminist accounts of women's subjectivity, women value intimacy, develop a capacity for nurturance, and an ethic of care for the 'other' with which we are connected, just as we learn to dread and fear separation from the other."). *See also* Symposium, *Feminist Theories of Relation in the Shadow of the Law*, 17 WIS. WOMEN'S L.J. 1 (2002).

12. Countless articles have been written identifying and illuminating the problems specific to women in higher learning environments. Many articles that focused on gender issues in law school were based on surveys conducted after it was determined that women were often marginalized and silenced in the law school environment. *See generally* Brown, *Countenance*, *supra* note 2 (considers the value of a single-sex education as a remedy for the alienation, under achievement and silencing that women experience in law school); Brown, APOSTASY?, *supra* note 1, at 843 (questions the wisdom of her proposal in her Harvard Women's Law Journal article but concludes that a women's law school is a good idea); Sarah Berger, et al., *Hey! There's Ladies Here!!*, 73 N.Y.U. L. REV. 1022, 1029 (1998) (examines four well-known studies of gender-diversified legal education showing the alienation and frustration of women); Joan M. Krauskopf, *Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools*, 44 J. LEGAL EDUC. 311 (1994) [hereinafter Krauskopf, *Touching the Elephant*]. "[A] substantial number of women experience disadvantages in the law school environment. One-fifth of women students report that they have experienced sexual harassment, and one-third have experienced sexual discrimination. . . . Forty-five percent of women and 64 percent of minority women feel deprived of role models by the limited number of women professors." *Id.* at 313. "A substantial number of women indicate less self-confidence than men." *Id.* at 314. "Forty-one percent of women students, compared to only 16 percent of men, say that they often feel less intelligent and articulate than they did before law school. Fewer women than men

As a result, I initially favored Penn after reading a study in *Glamour* magazine that ranked it in the top ten for being "gender friendly" (i.e., accommodating to women, based on the numbers of female students and faculty in the school).[13] Later, I was moved to rethink my first impression after reading an article by Lani Guinier in the *University of Pennsylvania Law Review*[14] (and, subsequently, her book[15]) that described the alienation of women at Penn. Her study showed that (despite comparable GPA and

report they participate in class, and fewer women than men believe that the Socratic method allows a free discussion of ideas (by 15 percentage points in both instances)." *Id.* The task force assembled to address gender issues in law schools formulated a list of problems for women in law school. *Id.* at 314-15. "Some discrimination or harassment is overt; some is due to a 'chilly climate' — the overall effect of subtle differential treatment, sometimes minor in any particular instance, that creates an uncomfortable atmosphere for women, undermines morale, and lessens productivity. Contributing to a chilly climate are various forms of sexual harassment; hostility or a presumption of incompetence from students, especially male students; refusal to recognize the value of women's contributions; sex bias in course coverage and casebooks; exclusion from informal networks of males who determine culture and make the decision in discipline; heavier committee assignments and counseling demands; failure to recognize greater family responsibilities; the double bind of being evaluated by standards (such as aggressiveness) admired in men but penalized in women; a heavier burden on women to prove their competence to perform male-only roles; expectations that women will encounter sex discrimination in the practice and, therefore, professorial ambivalence about them as students; failure to encourage either men or women, which affects women disproportionately because of their lifelong conditioning for homemaking, not careers." *Id.* at 315-16.

13. Linda R. Hirshman, *Law Schools Where Women Can Excel*, GLAMOUR, Sept. 1995, at 122. The following list ranks (in order) those law schools deemed to offer the best overall educational environment for aspiring women law students: Duke, University of Iowa, Stanford, New York University, University of Minnesota at Twin Cities, Columbia University, University of Illinois at Urbana-Champaign, University of Pennsylvania, Yale, Vanderbilt, University of Texas at Austin, University of California, Berkeley, Harvard, Northwestern, University of Michigan at Ann Arbor, Georgetown, University of Virginia, University of Chicago, and University of Southern California. *Id.*

14. Lani Guinier, *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994) [hereinafter Guinier, *Becoming Gentlemen: Women's Experiences*]. For example, Guinier found that whereas men expressed minimal interest in public interest work, 25% to 33% of the women entering law school were interested in pursuing public interest work upon graduation. *Id.* at 40. However, Guinier found that by their third year only 8% to 10% of the women continued to express such intentions. *Id.* "This suggests that, over three years at the Law School, women students come to sound more like their male classmates, and significantly less like their first year 'selves.'" *Id.* Moreover, Guinier's study reflected interviews of the women who attended the Law School, almost all of whom "described their first-year experience as a radical, painful, or repressive experience, one that they will never forget (or remember). Several women reported their voices were 'stolen' from them in the first year." *Id.* at 42-43. Many of these women stated that "they did not recognize their former selves, which they perceived as submerged in the pursuit of succeeding as a 'social male.'" *Id.* at 43. These women "expressed profound alienation from the Law School, the educational process, and, most disturbing, themselves, or who they used to be." *Id.* at 43. *See also* Lani Guinier, *Lessons and Challenges of Becoming Gentlemen*, 24 N.Y.U. REV. L. & SOC. CHANGE 1 (1998) [hereinafter Guinier, *Lessons and Challenges*].

15. LANI GUINIER ET AL., BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE 57 (1997) [hereinafter GUINIER, INSTITUTIONAL CHANGE].

LSAT figures), women lagged academically behind men and were less-than-proportionally represented on the editorial boards of the law journals and in the moot court.[16] Guinier concluded that the University of Pennsylvania was a "hostile learning environment for a disproportionate number of its female students."[17] Such a portrayal of an elitist Ivy League atmosphere, especially one from a well-informed resident of that world, ran counter to my sensibilities, which had been shaped by growing up in a working-class environment. Consequently, this quelled my initial enthusiasm for attending Penn.[18] Nonetheless, I received advice from

16. Guinier, *Becoming Gentlemen: Women's Experiences*, *supra* note 14, at 21. Although Guinier's study indicated that women begin to act more like their male classmates during law school, there was no correlation between the shift in perspective and academic performance. Her study showed that "women and men begin Penn Law School with equally stellar credentials. Holding incoming statistics constant, however, women graduate from the Law School with significantly less distinguished professional credentials." *Id.* at 21. "Although men and women enter with virtually equal statistics, men receive, on average, significantly better grades by the end of year one. Further, they maintain this advantage through graduation." *Id.* at 23. "Attitudinally [women] become closer to men; academically [women and men] move apart." *Id.* at 41.

17. GUINIER, INSTITUTIONAL CHANGE, *supra* note 15, at 57.

18. Other studies reveal similar data for other schools. *See, e.g.*, Taunya Lovell Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137, 141 (1988) (citing a survey demonstrating that 76% of all law students who participated in the survey felt that law professors "put down" or "belittle" students. Although males participated in the survey, a disproportionate amount of the female participants felt that the law school environment was more hostile to women.); Krauskopf, *Touching the Elephant*, *supra* note 12 (one-third of all females reported having experienced sexual discrimination, many more women than men reported less class participation, and women were 24.5% more likely to feel less intelligent and articulate after law school than men); Lisa A. Wilson & David H. Taylor, *Surveying Gender Bias At One Midwestern Law School*, 9 AM. U.J. GENDER SOC. POL'Y & L. 251 (2001) (a survey of Northern Illinois University College of Law students indicated that women reported higher levels of sexual harassment, lower levels of participation and greater feelings of dissatisfaction with their law school experience than men); Morrison Torrey, Jennifer Ries & Eliane Spiliopoulos, *What Every First-Year Female Law Student Should Know*, 7 COLUM. J. GENDER & L. 267 (1998) (surveying all the studies of women's experience in law school and suggesting six steps to combat these alienating experiences); Granfield, *Contextualizing the Different Voice*, *supra* note 2, at 8-11 (similar to data presented by other law schools, "women at Harvard Law reported experiencing differential treatment in their classroom. A majority of women, 53 percent, reported feeling that faculty members were biased against women." Moreover, "[i]n interviews with women, many described feeling personally alienated from the process of legal education. Many of the women . . . described a sense of marginality and otherness . . . Some women also complained of being mocked by male faculty members . . . Others experienced derision from male students for questioning law from a different perspective."); Suzanne Homer & Lois Schwartz, *Admitted But Not Accepted: Outsiders Take an Inside Look at Law School*, 5 BERKELEY WOMEN'S L.J. 1 (1989) (revealing a significant performance differential between men and women that had virtually identical entering GPA and LSAT scores); Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299, 1332-45 (1988) [hereinafter Weiss & Melling, *Twenty Women*] (discussing silencing in class, exclusion, insults and alienation). *But see* Janet Taber et al., *Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 STAN. L. REV. 1209, 1248-49 (1988) [hereinafter Taber, *Gender, Legal Education, and the Legal Profession*] (finding fewer gender differences in moral reasoning,

friends who continued to urge me to go there.[19] Their reasons were always the same: with an Ivy League law degree, I could "write my own ticket" or attain "upward mobility," which I interpreted to mean that I could become one of the elite myself.[20] Walking along the graveled path of my new campus, I felt my nose wrinkle with disdain at the prospect.[21] My goal was not to join an elite class of lawyers, but to take an active role in transforming the law while maintaining a balance in my family life.

My mind raced back to my initial examination of three sets of law school ratings. The first set, from the *U.S. News & World Report*, considers five factors: "selectivity" — which counts 25% of the formula — for high LSAT and GPAs for admission; 20% for "employment or placement success;" institutional reputation both "academic" (25%) as well as "non-academic" (15%) and "faculty resources" (15%).[22] From my point

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although studies show that moral reasoning changes after the first year).

19. Penn ranks #9 in the current *U.S. News and World Report* Ratings. *See Exclusive Rankings Schools of Law*, U.S. NEWS AND WORLD REPORT, Mar. 2003, *available at* http://www.usnews.com/usnews/edu/grad/rankings/law/brief/lawrank_brief.php.; *see also* David C. Yamada, *Same Old, Same Old: Law School Rankings and the Affirmation of Hierarchy*, 31 SUFFOLK U. L. Rev. 249 (1997). Yamada states that there are two flaws in the manner in which *U.S. News* publishes their rankings: First, *U.S. News* rankings panders more to law schools than to students, "if the U.S. News rankings are intended to serve as a sort of consumer's guide, they frustrate that purpose by overemphasizing criteria that may be of greater interest to the law schools than to the applicants and students. For example, student selectivity and academic reputation are each weighted twenty-five percent. Though non-academic reputation (in other words, what employers think of a school) may have more to do with the 'market value' of a school's degree than academic reputation, that criterion is weighted only fifteen percent. Employment success (twenty percent) and faculty resources (fifteen percent) are two other criteria that are weighted comparatively lightly despite their likely importance to students." *Id.* at 253-54. Moreover, Yamada states that "[t]here is no attempt to evaluate the quality of teaching at the ranked schools." *Id.* at 254. Second, the report appears to favor and place more emphasis on the Corporate Bar and "the rankings implicitly favor schools that place a large proportion of their students into high-paying, corporate law firms." *Id.*

20. *See* Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591 (1982) (arguing that law schools are a training ground for the elite and that legal education is a process of deliberate ideological indoctrination).

21. Studies indicate that "men identify more with the traditional role of lawyer as adversary, whereas women wanted to use the law to change society or help the underprivileged." Robert Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551, 611-16 (1973); Granfield, *Contextualizing the Different Voice*, *supra* note 2, at 8 (finding that a larger proportion of women have become more interested in social change while in law school). *See* Gerald P. Lopez, *Training Future Lawyers to Work With the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 WEST VIR. L. REV. 305 (1989) (stating that current legal education treats people and traditions as generic and that this approach teaches law students to approach practice as if all people and social life are homogeneous); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992) (argues that law school have abandoned training ethical practitioners by emphasizing abstract theory, resulting in incoherence in law teaching and scholarship).

22. *America's Best Graduate Schools: Exclusive Rankings*, U.S. NEWS & WORLD REP. (2003) [hereinafter U.S. NEWS 2003]. For current rankings, see http://www.usnews.com/usnews/edu/beyond/gradrank/gdlawnf.htm. A 1998 American

of view, the last criteria — expenditures per-student for instruction, library, financial aid and other services — was too important to count for only 15%. I was not interested in a school that placed a large proportion of its students into high-paying corporate law firms. From the materials that I had read and the people with whom I had spoken, I knew that many law firm associates were unhappy[23] and exhibited higher rates of depression and substance abuse than other Americans.[24] Furthermore, for women attorneys with family responsibilities,[25] these jobs requiring excessive hours continue to be the leading cause of professional stress.[26]

Association of Law Schools study criticized these ratings when they first came out. Stephen P. Klein, Ph.D. & Laura Hamilton, Ph.D., *The Validity of the U.S. News and World Report Ranking of ABA Law Schools*, Feb. 18, 1998, *at* http://www.aals.org/validity.html. *See also* Education and Social Science Library, University of Illinois at Urbana-Champaign, *College and University Rankings: Law Schools*, *at* http://www.library.uiuc.edu/edx/ranklaw.htm (last visited Nov. 15, 2004); Law School Application Aid, *Published Rankings*, *at* http://members.aol.com/frayed99/rankings.htm (last visited Nov. 15, 2004).

23. *See* Deborah L. Rhode, *The Professionalism Problem*, 39 WM. & MARY L. REV. 283, 296-97 n.77 (1998) (citing studies showing that a majority of lawyers report that they would choose another career if they had the decision to make again, and that three-quarters would not want their children to become lawyers. Also stating, "lawyers are unhappy with the culture of the profession, the structure of their work places, and the performance of the justice system."); Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871 (1999) (discusses depression, anxiety, alcoholism, divorce, suicide, physical health, and practicing law ethically.); Susan Diacoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U.L. REV. 1337, 1342 (1997) (demonstrating that "attorneys and persons choosing to attend law school have specific empirically demonstrable personality characteristics, and that these characteristics are partially responsible for the current crisis in the legal profession."); Benjamin et al., *supra* note 10, at 225-26 (concluding that "[t]he development and maintenance of the psychological well-being of law students . . . may be stunted by the process of legal education," and suggesting that law schools lighten the workloads, change the large student/faculty ratios and develop student interpersonal skills). *But see* Calvin G.C. Pang, *Eyeing the Circle: Finding A Place For Spirituality in A Law School Clinic*, 35 WILLAMETTE L. REV. 241 (1999) (uses an estate planning exercise for a dying client to advocate offering spiritual education to law students); Laurie A. Morin, *Reflections on Teaching Law as Right Livelihood: Cultivating Ethics, Professionalism, and Commitment to Public Service from the Inside Out*, 35 TULSA L.J. 227, 229 (2000) [hereinafter Morin, *Reflections on Teaching Law*] (advocating that the teacher's role is "to guide students through the process of discovering their own truths about how the legal profession can best fulfill their need for purpose and meaning in their work.").

24. Rhode, *supra* note 23, at 297 n.80 (stating that lawyers have about three times the rate of depression and almost twice the rate of substance abuse as other Americans). *See also* Beck et al., *supra* note 10, at 1 (finding of empirical study indicating that professional and personal well-being of lawyers is in serious jeopardy due to excessive work, alcohol abuse and high psychological distress).

25. Women spend twice as much time on family responsibilities as employed men. *See* DEBORAH L. RHODE, SPEAKING OF SEX: THE DENIAL OF GENDER INEQUALITY 149-53 (1997).

26. *See* Rhode, *supra* note 23, at 301 (stating that "half of American attorneys feel that they do not have enough time for their families"). "Inattention to diversity and quality-of-life issues not only undermines the profession's commitment to equal opportunity, but also compromises other values. The inadequacy of family policies and the persistence of

"Non-academic" ratings reflect what employers think of a school. They attempt to depict the "market value" of a school's degree,[27] which seemed similarly irrelevant to me. I also rebelled against the idea of ranking knowledge and ability with something as arbitrary as LSAT scores.[28] I bristle at the way in which law school rankings convey an artificial sense of precision, much as I have problems with class rankings for students.[29] They attempt to transform that which is inherently subjective into something that appears to be objective and quasi-scientific. In doing so, they encourage us to think simplistically about our institutions of higher learning. The very practice of ranking schools reinforces the notion of an educational caste system, one with hierarchical competitive implications. Furthermore, there was no attempt in the *U.S. News* rankings to evaluate quality of teaching,[30] experiential learning,[31] mentoring,[32] or the development of alternative employment for those interested in raising a family or taking a more active role in changing the law and legal institutions.

The second set of ratings I looked at was from *The Gourman Report*.[33] I found these equally unimpressive. Although the results ended up being

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gender, racial and sexual orientation bias are leading causes of job dissatisfaction, stress, depression and attrition." *Id.* at 320 n.199.

27. Yamada, *supra* note 19, at 253.

28. *See* discussion *infra* note 71.

29. *See* Lawrence S. Krieger, *What We're Not Telling Law Students – And Lawyers – That They Really Need To Know: Some Thoughts-in-Action Toward Revitalizing the Profession From Its Roots*, 13 J.L & EDUC. 1 (1998-99) (stating "[l]aw school seems to communicate to students that it is how you do, rather than who you are, that really matters . . . Students who bring this approach with them to the practice of law are obvious candidates for high stress, low self-esteem, and burnout.").

30. Francine Cullari, *Law School Rankings Fail To Account For All Factors*, 81 MICH. BUS. L.J. 52, 52 (2002) (criticizing the *U.S. News* ratings of student selectivity and academic reputations, suggesting that other factors such as faculty quality, student assessment of quality, clinics, summer employment, be examined).

31. *See* Pang, *supra* note 23, at 241 (describing the experience of drafting an estate plan and seeking an adoption for a dying coach on law students in an elder law clinic); Andrea M. Seielstad, *Community Building as Means of Teaching Creative, Cooperative, and Complex Problems in Clinical Legal Education*, 8 CLINICAL L. REV. 445 (2002) (considers how education in creative problem solving can be enhanced in the clinical context through work with poor communities engaged in community building).

32. *See* Brown, *Countenance*, *supra* note 2, at 10 (arguing that women need "ready access to senior students, faculty, and alumnae with whom they could identify as women."); Benjamin et. al., *supra* note 10, at 249 (stating that "[t]he distance between law faculty and their students leads to poor relations and is related significantly to graduate student dissatisfaction, both academic and nonacademic.").

33. JACK GOURMAN, THE GOURMAN REPORT: GRADUATE PROGRAMS A RATING OF GRADUATE AND PROFESSIONAL PROGRAMS IN AMERICAN AND INTERNATIONAL UNIVERSITIES (8th ed. rev. 1997). For a criticism of this report, see Abbie Willard, *Law School Rankings: Through the Education and Employment Looking Glass, at* http://www.nalp.org/Schools/rank1.htm (last visited Nov. 15, 2004) (characterizing his rankings as unreliable).

quite parallel to those in the *U.S. News* ratings, Gourman[34] did not list the criteria used to evaluate the law schools.[35] The third set, from a student magazine called *The National Jurist*,[36] used what I thought were the best ranking criteria. They included quality of teaching (30%), employment rate (as opposed to employment success) (20%), and faculty-student relations (17.5%). They also listed reputation among attorneys (17.5%) (something unimportant to me), and bar passage rates (15%) (a factor of some relevance to my possible career choices). In addition, *The National Jurist* also publishes *Public Interest Ratings*,[37] rankings which are based primarily on institutional and financial support for public interest law.[38] Interestingly, these ratings do not consider law school costs, loans, scholarships and other financial support, which I found to be an important omission. Such information is vital for students interested into going into public interest work,[39] as students must have enough financial support so they are not forced into the private law firm arena.[40] Additionally, I was

34. *See* GOURMAN, *supra* note 33. Jack Gourman is a retired California State University political science professor who extensively researched and developed his expertise in the area of legal education.

35. *See* Yamada, *supra* note 19, at 257.

36. *Student Ranked Best Law Schools*, THE NAT'L JURIST, Oct. 30, 1997.

37. *Public Interest Rankings*, THE NAT'L JURIST, Oct. 30, 1997. For other rankings see Education and Social Science Library, University of Illinois at Urbana-Champaign, *College and University Rankings: Law Schools*, *at* http://www.library.uiuc.edu/edx/ranklaw.htm (last visited Nov. 15, 2004); Law Schools Application Aid, *Published Rankings*, *at* http://members.aol.com/frayed99/rankings.htm (last visited Nov. 15, 2004); *See also* Klein & Hamilton, *supra* note 22.

38. *See* Andriene Stone, *The Public Interest and the Power of the Feminist Critique of Law School: Women's Empowerment of Legal Education and Its Implication for the Fate of Public Interest Commitment*, 5 AM. U.J. GENDER & L. 525, 527 n.9 (1997) [hereinafter Stone, *Public Interest*] (suggests that modern feminist scholarship may play a role in addressing the trend of waning public interest commitment during law school); Richard Abel, *Choosing, Nurturing, Training, and Placing Public Law Students*, 70 FORDHAM L. REV. 1563 (2002) (discussing the erosion of public interest commitment during law school and the strategies of choosing, nurturing, and placing those who will make the greatest contribution to the public interest); Panel Discussion at Symposium, *Legal Education and the Role of Law Schools in Defining and Training Lawyers for Public Interest Practice in the Twenty-First Century*, 3 N.Y. CITY L. REV. 139 (2000) (conversation among professors and other professionals discussing ethics, pro bono, public service, and other teaching and curriculum issues in the law school).

39. Public interest means to provide "legal services to poor people, prisoners, victims of discrimination, and other politically unpopular groups of people." Peter M. Cicchino, *Defending Humanity*, 9 AM. U. J. GENDER SOC. POL'Y & L. 1 (2001); It could also mean "lawyers working for a social or political cause," or "lawyers in government departments who assist the functioning of government as a prosecutor, a public defender or an attorney for a regulator or other government agency." Stone, *Public Interest*, *supra* note 38, at 527.

40. *See* John A. Sebert, *The Cost and Financing of Legal Educations*, 52 J. LEGAL EDUC. 516 (2002) (documenting the dramatic increases in tuition, reductions in financial support and increased borrowing by law students in the decade of the 1990s). *See also* Stone, *supra* note 38, at 525; ROBERT STOVER, MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL 34-35 (Howard S. Erlanger ed., 1989) (claiming that "during law school the number of . . . students who preferred that their first

disappointed that these ratings did not consider diversity in terms of minority representation of students, faculty, administration and staff; considerations very important to me.[41]

I also looked at a large-scale study conducted by Linda Wightman and sponsored by the Law School Admission Council, which examined women's experiences in 163 law schools across the nation.[42] Her report concluded that "law school is not an environment that nurtures the academic development of women."[43] "Whereas in every other graduate field, women do better than men — despite scoring lower on standardized admission tests — in law school, women do less well on the LSAT *and* less well in their courses." Wightman states that after their first year "men rated themselves significantly higher than women in categories such as academic ability, competitiveness, public speaking, and self-confidence in academic situations."[44] This study also indicated, like the *Guinier* study, that large numbers of women in ethnic groups experienced gender

job be in public interest law declined markedly, and this shift can be explained in terms of changes in the students' values and expectations" and showing in one law school that one-third of students entered law school with a public interest commitment, yet only one-sixth actually graduated with that goal); Jonathan O. Hafen, *Public Interest Law and Legal Education: What Role Should Law Schools Play in Meeting the Legal Needs Crisis?*, 2 B.U. PUB. INT. L.J. 7 (1998); Lewis A. Kornhauser & Richard L. Revesz, *Legal Education and Entry into the Legal Profession: The Role of Race, Gender, and Educational Debt*, 70 N.Y.U. L. REV. 829 (1995) (proposes loan repayment assistance programs ("LRAP") as one way to combat the statistics that "[h]igher debt increased the relative probability that female graduates would take non-elite for-profit jobs over not-for-profit jobs, and elite for-profit jobs over not-for-profit jobs."); Michael A. Olivas, *Paying for a Law Degree: Trends in Student Borrowing and the Ability to Repay Debt*, 49 J. LEGAL. EDUC. 335 (1999) (reviewing recent data on cost trends in professional education, concluding that the cumulative effect is to threaten legal education and harm education's "traditional inequity-reducing powers").

41. *See* Thomas D. Griffith, *Diversity and the Law School*, 74 S. CAL. L. REV. 239 (2000) (discussing activities of various groups at the Southern California Law School and the drop in African-American enrollments after attacks on the state's affirmative action program); Luz E. Herrera, *Challenging a Tradition of Exclusion: The History of an Unheard Story at Harvard Law School*, 5 HARV. LATINO L. REV. 51, 52 (2002) (discussing the hiring of Latino faculty at Harvard Law, looking both at the history and making recommendations for the future); Pamela J. Smith, *Teaching the Retrenchment Generation: When Sapphire Meets Socrates At the Intersection of Race, Gender, and Authority*, 6 WM. & MARY J. WOMEN & L. 53 (1999) (sets forth the presumptions of incompetence that are gender and race based and provides suggestions and strategies for institutions to overcome the resulting effects of the synergism of negativity); Cruz Reynoso & Corj Ameron, *Diversity in Legal Education: A Broader View, a Deeper Commitment*, 52 J. LEGAL EDUC. 491 (2002) (suggesting a more comprehensive approach to fulfilling the law school's commitment to diversity in the student body — including conditional admission, outreach, and pedagogical and curricular innovation).

42. LINDA F. WIGHTMAN, LAW SCHOOL ADMISSION COUNCIL, WOMEN IN LEGAL EDUCATION: A COMPARISON OF THE LAW SCHOOL PERFORMANCE AND LAW SCHOOL EXPERIENCES OF WOMEN AND MEN (1996) (reviewing data on approximately 29,000 students and noting differences based on race and ethnicity as well as sex).

43. *Id.* at 27.

44. *Id.* at 53.

discrimination or adverse treatment while in law school,[45] often times perpetrated by their own peers.[46]

The University of Oregon, as well as a number of other state and private schools I investigated, had not been a part of the *Glamour* magazine study, which examined only the twenty top-ranked law schools. But Oregon had been recommended to me because of its more "laid back" atmosphere,[47] a comparatively high ratio of female to male instructors,[48] and because women make up a significant portion of the student body.[49] Moreover, a book entitled *A Woman's Guide to Law School* also gave Oregon high marks.[50] The admissions process at Oregon was very positive, and the atmosphere seemed genuinely supportive. When I visited the campus, several women students highly recommended the University to me and the woman professor who teaches Women and the Law gave me a personal tour. I discovered that, unlike at Penn, the women fared much better academically and participated proportionally on law review and moot court.[51] I did, however, read the "Report of the Oregon Supreme Court/Oregon State Bar Task Force on Gender Fairness"[52] and discovered

45. *Id.* at 60.

46. *See* Mary F. Loss, Note, *Kiss the Girls and Make Them Sue: Liability for Peer Sexual Harassment*, 100 W. VA. L. REV. 271, 295 (1997) ("[t]his article deals with the issue of peer sexual harassment in the schools in an objective way, discussing whether legislation and case law confer liability on a school system for ignoring complaints of harassment and even abuse of students by other students"). *See also* Krauskopf, *Touching the Elephant*, *supra* note 12.

47. *See generally* Susan Daicoff, *supra* note 23 (discussing that students become dissatisfied in law school due to the alienation experience from the competitive nature of the academic process).

48. As of 2003-2004 the University of Oregon School of Law [hereinafter University of Oregon] had 28 full-time faculty, of whom 10 were women, 6 were minorities of color, and one was gay. In contrast, Penn had 65 faculty, of whom 57 were men and 8 women. *See* The AALS Directory of Law Teachers 2001-2002 (full-time faculty does not include Legal Research and Writing ("LRW") instructors). For a discussion of discrimination against LRW teachers see Neumann, *infra* note 78.

49. The class of 1996 was 54% women; the class of 1999 was 54% women; the class of 2000 was 48% women; the class of 2001 was 43% women; the class of 2002 was 36% women, the class of 2003 was 42% women, and the class of 2004 was 48% women. University of Oregon School of Law Admissions Office.

50. LINDA HIRSHMAN, A WOMAN'S GUIDE TO LAW SCHOOL (1999).

51. In 2002-2003, 39% of the law review participants were women, 40% of the moot court board and 49% of the moot court participants were women, and 53% of those graduating order of the coif were women. University of Oregon School of Law Admissions Office. *See also* Jean C. Love, *Twenty Questions on the Status of Women Students in Your Law School*, 11 WIS. WOMEN'S L.J. 405, 412-15 (1997) (discussing questions that law school administrators and faculty should ask themselves to help determine if they are providing true equality; including looking at statistical data regarding the percentage of men and women at the law school who are involved in law review, moot court, or are order of the coif).

52. OREGON STATE BAR, REPORT OF THE OREGON SUPREME COURT/OREGON STATE BAR TASK FORCE ON GENDER FAIRNESS (May 1998) [hereinafter OSB REPORT] (This study combined all Oregon law schools).

that the University of Oregon was similar to most law schools when it came to findings on women's self-esteem, silencing, and peer discrimination.[53] In addition, the student body lacked diversity — being comprised mostly of white students,[54] and the female students were more likely to fail the bar exam.[55] The Task Report further indicated that the female faculty believed that, as compared to their male colleagues they "have less access to leadership positions."[56]

These issues were important to me because I did not want to repeat some of the unpleasant experiences of my undergraduate years. I had majored in pre-law and minored in women's studies at a co-educational university, and my experience was largely one of alienation and disconnection.[57] Even in some of the women's studies classes, men often enrolled and dominated the discourse.[58] I also found that I was often the

53. *Id.* at 110 (indicating that of the 13% of students who rated themselves "below average" in self-confidence, 67% were women); "[B]oth men and women overwhelmingly reported that male students participate more in class than do female students." *Id.* at 111.

54. University of Oregon Office of Admissions (For the academic year 2001-2002, 15% of the total student body was comprised of minority students, for 2002-2003, 13%; for 2003-2004, 18% of the entering class were minorities.); Thomas D. Griffith, *Diversity and the Law School*, 74 S. CAL L. REV. 169, 172-73 (2000) (citing a survey showing overwhelming support of both black and white matriculants for a strong institutional emphasis on a diverse student body).

55. Bar statistics have varied over the years. In 2001, 75% of the women passed compared to 80% of the men. University of Oregon School of Law Office of Administration. On the July 2002 bar exam the statistics for women improved, 80% of the women passed and 79% of the men. *Id.* On the July 2003 bar exam, 79% of the women passed compared to 76% of the men. *Id.*

56. OSB REPORT, *supra* note 52, at 116. This was true of all three Oregon law schools. *Id.*

57. The alienating experiences of law school have been documented in several law review articles. *See* Weiss & Melling, *Twenty Women*, *supra* note 18 (where various forms of alienation — alienation from self, law school, the classroom, and the content of the legal education — were described during Yale's women's law school discussion group); Paula Gaber, *"Just Trying to Be Human in This Place": The Legal Education of Twenty Women*, 10 YALE J.L. & FEMINISM 165, 165-72 (1998) (discussing several different studies at multiple law schools conducted during the 1970s, 1980s, and 1990s, confirming the alienation of women and minorities); Torrey, Ries, & Spiliopoulos, *supra* note 18, at 288-89 ("[T]he hostile classroom has a measurable, detrimental effect on women's self confidence. Studies report that feelings of powerlessness, alienation, and self-doubt directly result from the law school experience. It is not unusual for women to even suffer physiological responses from the stress.").

58. *See* Maryam Ahranjani, *Mary Daly v. Boston College: The Impermissibility of Single-sex Classrooms Within a Private University*, 9 J. GENDER SOC. POL. & L. 179 (2001) (describing the experiences of a 70-year-old Women's Studies professor who refused to allow men in her class and when sued, resigned her post). *See also* Brown, *Countenance*, *supra* note 2, at 246 (citing ROBERT STEVEN, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S (1983); the concept of critical mass works in two directions: When women integrate into historically male institutions, they may require larger percentages than might at first be assumed in order to participate fully. Conversely, when men integrate into institutions that have traditionally been all female, even very small numbers may be enough to dominate); Sarah H. Sternglanz & Shirley Lyberger-Ficek, *Sex Differences in Student-Teacher Interactions in the College Classroom*, 3 SEX

subject of sexual discrimination.[59] The core message in the co-education environment was consistent and nearly universal: education is not a process of enrichment for its own sake, but one of acquisition of certain skills and attainment of accomplishments (such as a degree) necessary to be a "productive member of society."[60] I remembered instructors over and over again describing college as preparation for the "real world," as if the world experienced by undergraduates was not "real" and was perhaps devoid of "real" value. I did not wish to repeat my undergraduate experience in law school and was desirous of a more humanistic approach for my upcoming three years of law learning.[61]

My sour thoughts about my undergraduate college disappeared as I

ROLES 345 (1977) (indicating that male college students dominate classroom interactions whether they are in the minority or the majority, even when participating in Women and the Law courses); Catherine G. Krupnick, *Sex Differences in College Teachers' Classroom Talk* (1984) (unpublished Ph.D. thesis, Harvard University Dept. of Education) (finding that males dominate classroom discussion in that they speak more frequently and for longer periods of time). Numerous law school studies reflect that women feel "silenced" in a law school environment and thus engage less frequently than men in class discussions. Banks, *supra* note 18, at 146 (finding that nearly twice as many women as men reported never volunteering in class, and concluding that women's silence results from their exclusion from the structure of the institution, especially the law school classroom, and from women's self-perception of inferiority). *See also* Taber, *Gender, Legal Education, and the Legal Profession*, *supra* note 18, at 1239 (finding that male students reported a higher frequency than women of asking questions in class, volunteering answers, and asking professors questions outside of class); Weiss & Melling, *Twenty Women*, *supra* note 18, at 1364-69 (presenting a table demonstrating the differences in male/female participation ratios in law school classes); GUINIER, INSTITUTIONAL CHANGE, *supra* note 15, at 63 (white male students are "encouraged and allowed to speak more often, for longer periods of time, and with greater positive feedback from their professors and peers."). Studies of fourth, sixth and eighth graders also indicate that girls are silenced in the classroom. *See* MYRA & DAVID SADLER, FAILING AT FAIRNESS: HOW AMERICA'S SCHOOLS CHEAT GIRLS 50 (1994) (indicating that white males receive more teacher attention).

59. *See* Emmalena K. Quesada, Note, *Innocent Kiss or Potential Legal Nightmare?* 83 CORNELL L. REV. 1014 (1998) (examines peer sexual harassment in primary and secondary schools and offers suggestions to schools seeking to avoid potential liability). *See also* Loss, *supra* note 46.

60. Difference is generally not rewarded in the traditional law school setting; instead the goal is assimilation into the existing norm of the market. *See* Sarah Berger et al., *Hey! There's Ladies Here!!* 73 N.Y.U. L. REV. 1022, 1029 (1998) (discussion on "retooling," quoting STAGES OF CURRICULUM TRANSFORMATION IN WOMEN'S PLACE IN THE ACADEMY: TRANSFORMING THE LIBERAL ARTS CURRICULUM 1, 14 (Marilyn R. Schuster & Susan R. Van Dyne eds., 1985), "it is not desirable for diversification . . . to influence the organization's work or culture. The company should operate as if every person were of the same race, gender, and nationality."). *See also* Pang, *supra* note 23; Morin, *supra* note 23; Seielstad, *supra* note 31; Cooney & Epstein, *infra* note 128.

61. *See* Cathaleen A. Roach, *A River Runs Through It: Tapping Into the Informational Stream to Move Students From Isolation to Autonomy*, 36 ARIZ. L. REV. 667 (1994); Michael Burns, *The Law School As a Model for Community*, 10 NOVA L. J. 329 (1986); Howard Lesnick, *The Integration of Responsibility and Values; Legal Education in an Alternative Consciousness of Lawyering & Law*, 10 NOVA L. J. 633 (1986); Richard H. Chused, *Faculty Parenthood: Law School Treatment of Pregnancy and Child Care*, 35 J. LEGAL EDUC. 568 (1985).

remembered my enlightening experiences after I had graduated. First, I helped set up an organic farm for the homeless — similar to the ashrams of India. There I became familiar with many areas of poverty law — health, battered women, welfare-to-work rules, etc. Afterwards, working for ten years as a paralegal for a prestigious law firm reinforced my interest in serving the public. The communal living at the farm, my alienating experience at the law firm, and my eventual desire to either adopt or have a child weighed heavily in my decision to attend the American All-Women's Law School.[62] Here I could live and work at the school, the curriculum's major focus was on public service and the active transformation of law, and the school's placement program was geared toward women who wanted a family.[63] The opportunity to grow and learn in an environment that affirmed my identity as a woman carried the day.[64]

Smiling to myself, I remembered the first time I read the brochure from American All-Women's Law School. I was immediately impressed by its mission statement. It consisted of three objectives: first, to teach specific lawyering skills and disseminate knowledge in a context designed to help students function effectively in the existing culture while working to change it.[65] Second, to develop a feminist consciousness through a grounding in a variety of feminist thought, emphasizing the broad effect of the law upon women of all social classes, races,[66] nationalities, religions

62. *See* Devon W. Carbado, *Motherhood and Work in Cultural Context: One Women's Patriarchal Bargain*, 21 HARV. WOMEN'S L.J. 1 (1998) (story of a Jamaican mother who worked and mothered nine children).

63. *See* SUSAN ESTRICH, SEX & POWER (Riverhead Books 2000).

64. So often the message for women pursuing legal careers is that it's not possible to self-identify both as a woman and as a lawyer in making career choices. *See* Deborah L. Rhode, *Perspectives on Professional Women*, 40 STAN. L. REV. 1163, 1203-05 (1988) (identifies the primary question for women professionals: "Could she satisfy vocation demands and could she do so without compromising her fundamental values and identity?" Then later argues that assimilating into the male professional world is not the answer because "dressing for success in professional circles requires more than a floppy bow tie or flannel suit for protective coloration. It demands a full makeover, and one largely inconsistent with feminist ideals. The image emerging from [assimilation] literature reflects little inspiration from the priorities, principles, and politics of the women's movement. It overlooks or undervalues concerns about maintaining relationships, minimizing hierarchy, caring for dependents, and building community."); Barbara Allen Babcock, *Book Review: Feminist Lawyers*, 50 STAN. L. REV. 1689 (1998) (reviewing VIRGINIA DRACHMAN, SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY (1998); discusses the problem of "double consciousness" — even the earliest women lawyers failed to resolve "the conflict between gender and professional identity").

65. *See* Granfield, *Contextualizing the Different Voice*, *supra* note 2, at 8 (finding that a larger proportion of women have become more interested in social change while in law school). *See also* public interest articles cited *supra* notes 37-39.

66. *See* Linda S. Greene, *Tokens, Role Models & Pedagogical Politics: Lamentations of an African American Female Law Professor*, 6 BERKELEY WOMEN'S L.J. 81 (1990-91) (personal experiences of one African American female law professor on tokenism as racism and sexism and the resulting loss of control and privacy); Deborah Waire Post, *Critical Thoughts About Race, Exclusion, Oppression & Tenure*, 15 PACE L. REV. 69, 70 (1994)

and sexual orientations.[67] Third, to create a mutually supportive living and learning environment in which women are provided with the tools and encouragement to develop their personal strengths,[68] as well as their own philosophies regarding women,[69] justice, the law and women's relationship to the larger community.[70]

[hereinafter Post, *Critical Thoughts*] (advocating the abandonment of tenure "which replicates hierarchy" and can exclude minorities and suggesting ways to encourage and reward excellence); Jennifer M. Russell, *On Being a Gorilla In Your Midst, Or The Life of One Black Woman in the Legal Academy*, 28 HARV. C.R.-C.L. L. REV. 259 (1993) (personal reflections of an African-American law professor who found in her mailbox an anonymously placed copy of a NATIONAL GEOGRAPHIC magazine with a picture of a gorilla on the cover); PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS (1991); Angela Mae Kupenda, *Making Traditional Course More Inclusive: Confessions of an African American Female Professor Who Attempted to Crash All the Barriers At Once*, 31 U.S.F. L. REV. 975 (1997) (relating the author's experiences at bringing inclusiveness into her first year of teaching a Contracts I course); Herrera, *supra* note 41 (giving a historical perspective on the hiring of Latino faculty at Harvard Law School).

67. *See* Jane S. Schacter, *Poised At the Threshold: Sexual Orientation, Law & the Law School: Curriculum in the Nineties*, 92 MICH. L. REV. 1910 (1994) (reviewing *Lesbians, Gay Men and the Law*, a possible law school casebook, which emphasizes constitutional, criminal, family and anti-discrimination law, covering issues in tort, property, contract, probate and immigration); Ann E. Freedman, *Feminist Legal Method In Action: Challenging Racism, Sexism and Homophobia in Law School*, 24 GA L. REV. 849 (1990) [hereinafter Freedman, *Racism, Sexism and Homophobia in Law School*] (describing her experiences of a law school where sexist, racist, homophobic culture existed, contrasted with an unconventional collaborative learning experience which helped the school become more sensitive to these issues).

68. *See* Lawrence S. Krieger, *What We're Not Telling Law Students — And Lawyers — That They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession from Its Roots*, 13 L. AND HEALTH 1, 12 (1998) (advising that "law students really need to know that, as attorneys, their best personal attributes are more important than their best skills or performances").

69. There is some evidence that the traditional law school experience can "change" you. *See* Sandra Janoff, *The Influence of Legal Education on Moral Reasoning*, 76 MINN. L. REV. 193, 237 (1991) (showing different moral reasoning patterns at the beginning of the first year but no significant difference at the end of the year); Audrey J. Schwartz, *Law, Lawyers, and Law School: Perspectives From the First-Year Class*, 30 J. LEGAL EDUC. 437 (1980) (evidencing a changed world view during the first year of law school). An all-women's law school would honor women's differences. *See* Sara E. Snodgrass, *Women's Intuition: The Effect of Subordinate Role on Interpersonal Sensitivity*, 49 J. PERSONALITY & SOC. PSYCHOL. 146 (1985); Wendy Wood & Stephen J. Karten, *Sex Differences in Interaction Style as a Product of Perceived Sex Differences in Competence*, 50 J. PERSONALITY & SOC. PSYCHOL. 341 (1986). *See also* DEBORAH TANNEN, GENDER AND DISCOURSE 132 n.6 (1994) (stating women initially perform better as psychotherapists because women possess the interactive skills essential to that profession); Bernice R. Sandler, *The Classroom Climate: Still a Chilly One for Women*, *in* EDUCATING MEN AND WOMEN TOGETHER: COEDUCATION IN A CHANGING WORLD 113 (Carol Lasser ed., 1987) (claiming the devaluation of female characteristics and values interferes with women's education); Grace K. Baruch, *The Traditional Feminine Role: Some Negative Effects*, 21 SCH. COUNS. 285 (1974).

70. *See* Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231 (1991) (indicating that a dysfunctional learning environment is created in many elite law schools where there are large Socratic classrooms, and is critical of mostly-male studies indicating

Nearing the main building, I recalled how different the admissions procedures at the American All-Women's Law School were from the other law schools. Although college grade point averages, extra-curricular activities and recommendation letters were all relevant, no LSAT scores were submitted,[71] and I had personal interviews[72] with several faculty members, students and a staff member.[73] Questions did not focus primarily on professional or academic aspirations. Instead, the individuals I met with mostly wanted me to talk about my life, my experiences, my values and beliefs, and how I viewed the law in the context of my personal life and how the law related to our society. Several questions addressed which

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that stress is necessary to motivate self-learning). *See also* Laurie A. Morin, *Reflections on Teaching Law as Right Livelihood: Cultivating Ethics, Professionalism, and Commitment to Public Service from the Inside Out*, 35 TULSA L. J. 227 (2000) (borrows from Buddhist notions to set forth four pathways to cultivating professional ethics, values, and a commitment to public service, not as external norms, but "from the inside out").

71. *See* Rita J. Simon & Mona J. E. Danner, *Gender, Race and the Predictive Value of the LSAT*, 40 J. LEGAL EDUC. 525 (1990) (compares male and female law students' scores on the LSAT with grades upon graduating in five law schools, concluding that, although more studies should be done, the LSAT scores predict academic performance in law school equally well for men and women); David M. White & Terry E. Roth, *The Law School Admission Test and the Continuing Minority Status of Women in Law Schools*, 2 HARV. WOMEN'S L.J. 103 (1979) (arguing that the LSAT remains a major obstacle to sexual integration of the legal profession and that law schools should rely less on the LSAT to assure true sexual parity in the profession); Leslie G. Espinoza, *The LSAT: Narratives and Bias*, 1 AM. U. J. GENDER & L. 121 (1993). *See also* Gregory H. Williams, *Transforming the Powerless to the Powerful: The Public Responsibilities of Law Schools*, 28 N.M. L. REV. 1, 13 (discussing the adverse impact of LSATs on minorities; citing Linda F. Wightman, *The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a Factor in Law School Admission Decisions*, 72 N.Y.U. L. REV. 1 (1997)); Andrea L. Silverstein, Note, *Standardized Tests: The Continuation of Gender Bias in Higher Education*, 29 HOFSTRA L. REV. 669 (2000); William C. Kidder, *Does the LSAT Mirror or Magnify Racial and Ethnic Differences in Educational Attainment?*, 89 CAL. L. REV. 1055 (2001) (from a database of fifteen law schools, author finds that the LSAT is culturally biased, i.e., racial and ethnic gaps on the LSAT are found to be larger than differences in undergraduate grades).

72. *See* Jason S. Marks, *Legally Blind? Reevaluating Law School Admissions at the Dawn of a New Century*, 29 J.C. & U.L. 111, 149-150 (2002) (advocating "holistic" law school admissions wherein all applicants would have a personal interview conducted by three alums that would be considered alongside the applicants undergraduate GPA and LSAT scores as well as several other factors); Sandra R. Klein, *Legal Education in the United States and England: A Comparative Analysis*, 13 LOY. L.A. INT'L & COMP. L. REV. 601, 603-04 (1991) (analyzing legal education in both the U.S. and England, including admissions processes and found that "in marked contrast to law school admissions in the United States, many law schools in England require an interview prior to admittance . . . which reveal to an admissions council unique qualifications they possess, which are not quantified in their grades or A-level scores."). *But see* Janice Nadler & Mary R. Rose, *Victim Impact Testimony and the Psychology of Punishment*, 88 CORNELL L. REV. 419, 448-49 n.160 (2003) (citing Robyn M. Dawes, *A Case Study of Graduate Admissions: Application of Three Principles of Human Decision Making*, 26 AM. PSYCHOLOGIST 180, 182, 186-87 (1971) ("indicating that the addition of personal interview information led to less-reliable graduate school admission decisions compared to the use of grades and test scores alone.")).

73. *See* Kennedy, *supra* note 19.

principles attracted me to the legal profession and how I might use legal work to express my values, ideals and visions.[74] Other questions focused on my dedication to the homeless project and my persistence and passion in investigating various law schools,[75] although not all the questions were serious.[76]

My visit to the American All-Women's Law School and the level of comfort I had felt throughout the admissions process figured prominently in my decision to choose this school over Penn and Oregon. Moreover, I felt that I was the recipient of a great privilege. I now had the opportunity to attend a school that is one of its kind — an accredited school[77] with a successful affirmative action program,[78] generous scholarships, and all

74. *See* Morin, *supra* note 23, at 266-67 (presents a "professional goal and values exercise" to define goals that are personally fulfilling, that helps rather than harms others and that makes a difference in the world, such as integrity. "What principles attract me to the legal profession? How can I use my work to express my values, ideals and visions? Service. How can my work enable me to meet a need in the world that I care about? What individuals or groups do I wish to serve? Enjoyment. What do I love to do? How can the legal profession take the most advantage of my innate skills and abilities? Excellence. What draws out my best? What do I need to dedicate myself wholeheartedly to excellence in my law school and legal career? Personal. How can I be true to my own purpose and values in the practice of law? Interpersonal. What kinds of relationships do I want to have with clients, colleagues, and adversaries? Community. What kind of difference do I want to make in the world?").

75. This law school's admissions goal is to broaden the narrow "academic" credentials of GPA and LSAT scores to include other factors, such as interpersonal and intrapersonal skills. *See* DANIEL GOLEMAN, EMOTIONAL INTELLIGENCE (1995) (dustjacket copy) ("Emotional intelligence includes self-awareness and impulse control, persistence, zeal, and self-motivation, empathy and social deftness," and as he says, "These are the qualities that mark people who excel in real life: whose intimate relationships flourish, who are stars in the workplace. These are also the hallmarks of character and self-discipline, of altruism and compassion — basic capacities needed if our society is to thrive.").

76. One instructor asked me: Of the following, which would I most like to see in the future: a) the spouse of the president referred to as "The First Gentleman;" b) the Pentagon controlled by women for one day; c) a law requiring all men to perform 40 hours of domestic work a week — and like it; or d) the name of the "Chicago Bulls" changed to the "Chicago Sacred Cows."

77. The American Bar Association ("ABA") accredits law schools. The ABA requires that a law school operate in compliance the ABA's Standards for the Approval of Law Schools which relate to the following: "[R]esources for the program, objectives and goals of the law school, governance, the law school-university relationship, diversity and equality of opportunity, career services, curriculum, evaluation of scholastic achievement, course credit and residence requirements, size and qualifications of faculty, professional environment, admissions standards and procedures, library and information resources, and the physical facilities of the law school." *See* David T. Link, *Accreditation*, April 1, 2001, *at* http://jurist.law.pitt.edu/idea0401.htm. Not requiring the LSAT, *supra* note 71, might cause a problem with ABA accreditation, however, alternative exams are allowed by those standards.

78. *See* William C. Kidder, *Situating Asian Pacific Americans in the Law School Affirmative Action Debate: Empirical Facts about Thernstrom's Rhetorical Acts*, 7 ASIAN L. J. 29 (2000) (analyzing the empirical data on the consequences for Asian Pacific Americans of ending race-conscious affirmative action in California). *See* Sebert, *supra* note 40 (noting the trend in the decade of the 1990s of reduced scholarships as well as fewer federal

women professors,[79] all women administrators,[80] all women staff, and of course, an all-women student body.[81] Looking back, my choice was an easy one.

ORIENTATION

Pulling myself from my thoughts, I crossed the threshold of the farmhouse. The vestibule was much brighter than one would anticipate, owing to the large beveled glass windows that framed the double-entry doorway. The windows allowed the beautiful summer light to bathe the interior. Several other women were winding their way toward what most people would call the living room, but what in this case was more of a true hall. There was a sunken hardwood floor, bright area rugs, sofas, small tables, comfortable chairs, and an open-hearth fireplace. It was, in a word, cozy. Most of the other new students were already in this room, perhaps fifty in all, awaiting the start of our group orientation meeting in which the outline for the summer program and first year of law school would be discussed.

The meeting began with greetings and introductory statements by teachers and administrators. I quickly surmised that there was no dean or typical hierarchical "chain of command" in place here, which contributed to a communal atmosphere from the outset. It was noteworthy that the first topics covered concerned the personal accommodations and incidentals

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PELL grants and greater student debt).

79. Much has been written on gender, race, and other diversity issues in traditional law schools. *See* Freedman, *Racism, Sexism and Homophobia in Law School*, *supra* note 66, at 849 (describing her experiences of a law school where sexist, racist, homophobic culture existed and of an unconventional collaborative learning experience which helped the school become more sensitive to these issues); Charles R. Lawrence, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 341 n.100 (1987) (stating how common it is for racial minorities "to have white colleagues express stereotyped or derogatory views either by way of direct statements or by unstated but implicit assumptions"); Seidenberg, *supra* note 9 at 842; Nancy Levit, *Keeping Feminism in its Place: Sex Segregation and the Domestication of Female Academics*, 49 U. KAN. L. REV. 775, 777 (2001) (argues that "female law professors are performing more of the occupational equivalent of 'housework' and the 'childcare' than their male counterparts"); Neumann, *supra* note 2 (Statistics show that in the fall of 1998, "70% of legal writing teachers were women."). *But see* Brandice J. Canes & Harvey S. Rosen, *Following in Her Footsteps? Faculty Gender Composition and Women's Choices of College Majors*, 48 INDUS. & LAB. REL. REV. 486 (1995) (studied three undergraduate educational institutions and found no evidence that an increase in the share of women on a department's faculty led to an increase in its share of female majors).

80. *See* Marina Angel, *The Glass Ceiling For Women in Legal Education: Contract Positions and the Death of Tenure*, 50 J. LEGAL EDUC. 1 (2000) (stating that only ten percent of law school deans are women).

81. ESTRICH, *supra* note 63, at 136 ("Take away men, advocates of single-sex education (myself included) argue, and you will see women at their best, their most ambitious, speaking out, running everything.").

associated with life at the school. The law school would be run substantially as a cooperative.[82] Each student assumed a variety of duties associated with the daily operation and maintenance of the school. One administrator explained, "this might involve working in the food service area one week, the child care facility the next, and so on, always coordinating the effort with fellow students, faculty and members of the professional staff responsible for each function." She continued that many students chose to live in on campus apartments. Although some members of the community in households with families live off campus, *all* members participate in the cooperative activities.[83]

As the orientation progressed I discovered that administratively the school was run by two co-facilitators who were part of a partnership board.[84] The board's make-up (as well as that of the co-facilitator) changed on a staggered basis every year, each member (or co-facilitator) served two years. Board members were drawn from the parent nonprofit organization that endows the college, invited outside individuals, and representatives of the faculty, staff, and student body. Facilitators were usually members of the school's faculty. Similarly constructed (but separate) boards handled grievances on academic, labor and personal-conduct matters, with members serving for one academic year. The school was run as a private non-profit organization.[85] Given the Supreme Court's decision concerning the Equal

82. *See* DUNCAN KENNEDY, LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM (1983) (arguing the importance of maintaining a cooperative nature because of the focus on improving interpersonal skills and providing a supporting environment).

83. Due to safety concerns and the desire to foster an "all woman" atmosphere, men are restricted from entering the campus except for certain activities (i.e., graduation) or if they have a woman "sponsor" invite them on campus. Therefore, it would be impractical for women who had men in their household to live on campus.

84. The partnership model, not a "dominator" model, would be the type of organizational structure of a feminist law school. RIANE EISLER & DAVID LOYE, THE PARTNERSHIP WAY (1990) (describing the "dominator" model as one of control and domination, whereas the partnership model is based on mutual respect and empowerment. Instead of a "leader," the partnership model has a "facilitator," who inspires rather than commands, bringing forth the best in others rather than cowing them into submission, eliciting creativity and trust rather than rote obedience and fear). *See* Theresa A. Gabaldon, *The Lemonade Stand: Feminist and Other Reflections on the Limited Liability of Corporate Shareholders*, 45 VAND. L. REV. 1387 (1992) (critique of the corporate model of limited liability and thus a preference for the unlimited liability model of partnership law).

85. The school would qualify as a tax-exempt educational organization and as such would not be required to pay income tax on its funds and could receive charitable contributions that would be deductible to donors on their income tax return. The state action requirement of the fourteenth equal protection amendment is met in cases involving race — Bob Jones Univ. v. United States, 461 U.S. 574 (1983) (denying tax exemptions to racially discriminatory university) but not in cases involving gender — Junior Chamber of Commerce, Inc. v. United States Jaycees, 495 F.2d 883 (10th Cir. 1974), *cert. denied*, 419 U.S. 1026 (1974); Stearns v. Veterans of Foreign Wars, 394 F. Supp. 138 (D.D.C. 1975), *aff'd mem.*, 527 F.2d 1387 (D.C. Cir.), *cert. denied*, 429 U.S. 822 (1976); Trs. of Smith College v. Bd. of Assessors of Whateley, 385 Mass. 767, 434 N.W.2d 182 (1982). *See also*

Protection Clause and military academies,[86] as well as certain mandates under Title IX,[87] the school was not likely to become publicly funded.

The first to speak was one of the co-facilitators, a tall lean Native American woman, named Trueheart. "The faculty here at the All-Women's Law School is comprised of a diverse group of women,[88] not hired through the American Association of Law Schools ("AALS") recruitment conference or by means of the traditional criteria, i.e., quality

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Boris I. Bittker & Kenneth M. Kaufman, *Taxes and Civil Rights: Constitutionalizing the Internal Revenue Code*, 82 YALE L. J. 51 (1972) (discussing the tax-exempt status and allowable charitable deduction for fraternal orders and social clubs that discriminate on the basis of race, religion, nationality, sex and political affiliation); Jane Vandeventer Goldman, Note, *Taxing Sex Discriminations: Revoking Tax Benefits of Organizations Which Discriminate on the Basis of Sex*, 1976 ARIZ. ST. L.J. 641 (1976) (explores the differences between race and sex discrimination in tax policy and equal protection theory and concludes that an injunction against tax benefits to organizations which discriminate on the basis of sex will not succeed); Comment, *Tax Incentives as State Action*, 122 U. PA. L. REV. 414 (1973) (exploring whether tax-exempt status and a charitable deduction rise to the level of state actions for constitutional equal protection arguments).

86. Allison Herren Lee, *Title IX, Equal Protection, and the Richter Scale: Will VMI's Vibrations Topple Single-Sex Education*, 7 TEX. J. WOMEN & L. 37, 86-87 (1997) (concluding that women's colleges may withstand intermediate scrutiny under the Equal Protection Act by "showing educational discrimination against women" and by asserting a "diversity defense" and could withstand Title IX attack based on the *Weber* and *Johnson* cases); Amy H. Nemko, *Single-sex Public Education after VMI: The Case for Women's Schools*, 21 HARV. WOMEN'S L.J. 19 (1998) (argues that Supreme Court's intermediate scrutiny standard for sex classifications in VMI would not preclude a state from permitting a single-sex public school for women).

87. *See* Brown, *Countenance*, *supra* note 2, at 24-36 (in explaining why the market does not recognize women's law school as an option, the author provides an insightful discussion of the legal and practical barriers to an all-women's law school. The author also discusses a number of models to implement women's legal education).

88. *See* Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537, 545 (1988) (empirical study on racial and gender patterns in hiring, retention, and firing of faculty showing (1) small numbers of minority professors, (2) minority teachers leave their schools at higher rates than do their white colleagues, (3) women teaching non-tenure track legal research and writing at higher rates, (4) high "prestige" institutions are behind other schools in hiring women, and (5) some schools are denying tenure to women at disproportionate rates); Deborah Jones Merritt & Barbara F. Reskin, *The Double Minority: Empirical Evidence of a Double Standard in Law School Hiring of Minority Women*, 65 S. CAL. L. REV. 2299 (1992) [hereinafter Merritt & Reskin, *The Double Minority*] (empirical study comparing minority women and men in terms of academic rank and course assignments, analyzing the differences and making recommendations for change); Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199 (1997) [hereinafter Merritt & Reskin, *Sex, Race, and Credentials*] (reporting results of a comprehensive empirical study of the effect of sex and race on tenure-track hiring concluding (1) that white women, and men of color, but not women of color, began teaching at somewhat more prestigious schools than white men with comparable credentials, (2) that men were more likely than women to begin teaching at a higher professional rank, and (3) that men were more likely than women to teach constitutional law, "a high status" course that can enhance a professor's career prospects, while women were more likely to teach trust and estates or skills courses, both low status subjects that may reduce a professor's career prospects).

of law school attended and prestigious law firm experience.[89] In fact, I was recruited on my Navaho Indian Reservation and given a full scholarship to attend the American All-Women's Law School. The school has receptions for prospective women students and potential faculty in all the capitals and major cities of the United States (and even in some remote locations). Unlike most schools, where hiring one's graduates is frowned upon, here at American All-Women's we actively recruit minorities and others with different viewpoints and backgrounds, oftentimes our own graduates. The faculty here at the American All-Women's Law School do receive tenure[90] and the criteria (publications, teaching and service) are similar to those in other law schools. Good teaching and mentoring of students is indispensable for getting tenure, but we hold regular teaching workshops and provide lots of team teaching to ensure that all of our faculty obtain tenure. Some of our faculty get tenure just based on their service. For example, one faculty member started three non-profit organizations. She was able to provide funding for these organizations and employment for many of our graduate students. Other faculty just focus on publications, although we encourage a variety of writing; op-ed pieces and appellate briefs are more apt to effect change in the law than law review articles. The work requirements here at the All-Women's Law School are very different than the typical law school. We have job sharing, flex time, part-time tenure-track positions, and the opportunity to choose one tract — service, teaching, or research — on an alternating semester or permanent basis. Children of faculty attend day care at the school, and faculty members receive six-months paid leave for maternity; incidentally, we also allow some maternity leave for students. Our purpose here at the All-Women's Law School is to set up the ideal work environment to model the possibilities for the outside world. Our pay scale is commensurate with comparable males' salaries at other law schools."[91]

At the conclusion of these discussions, members of the faculty or staff who had interviewed the incoming students in the admission process, introduced us to the surprisingly small group.[92] I was impressed by how

89. Merritt & Reskin, *Sex, Race, and Credentials*, *supra* note 88.

90. Although tenure has been criticized as "replicating hierarchy," tenure grants women security and allows them to express their opinions without the fear of loss of job. *See* Post, *Critical Thoughts*, *supra* note 66 (advocating the abandonment of tenure "which replicates hierarchy" and can exclude minorities and suggesting ways to encourage and reward excellence).

91. Data shows that women earn less than men in almost every field (law, accounting, investment banking, academia, film, etc.) and the higher the rank the greater the pay disparity. *See* ESTRICH, *supra* note 63, at 69-89. The only exceptions are women's schools where women full professors make as much as the men. This is in contrast to private co-educational schools where women only make 88 percent of what the men make. *Id.* at 85, citing VIRGINIA VILIAN, WHY SO SLOW?: THE ADVANCEMENT OF WOMEN (1998).

92. No more than 75 women should be admitted in any given class, for a total student population of a maximum of 225. *See* C.M. DEASY, DESIGNING PLACES FOR PEOPLE

much information my presenter remembered from our interview, but I was even more impressed by the diversity of women in our cohort: mothers, singles, Native Americans, Asian immigrants, lesbians, wives, poor, wealthy, and in-between backgrounds, army brats, Jews, Christians, Buddhists, nurses, executives, homemakers, even a blind actress, 22 years of age to 53 years.[93] During the meeting I learned that an afternoon picnic with small group discussions was planned for the afternoon so that all 1Ls could mingle and converse with the 2Ls and 3Ls.

The other co-facilitator, a very energetic woman called Zubeda, described the orientation and summer program. "The first week's activities will provide all admitted students with a glimpse of what life is like here at the American All-Women's Law School. The school arranges for you to stay with a current law student. This gives you the chance to meet with a future peer and hear first-hand about her experiences at the law school. You will attend a summer school class with her for a day and help her with her 'weekly cooperative duties.' Your week also involves a number of exciting experiences: you may visit various organizations in the community where the school's students have the opportunity to complete externships or pro bono projects; you may attend a Women's Law Forum Conference focusing on a number of cutting-edge legal issues relating to females; you may volunteer at a homeless shelter for women and children, and of course you will want to became familiar with the surroundings of the Law School."[94]

"The second week's activities include a five-day mediation seminar and a two-day course on briefing a case, legal language and stress management. The third week is an intensive personal effectiveness training

99 (1985) ("Studies have shown that students in smaller schools participated more in extracurricular activities, had a more positive self-image, showed a greater sense of responsibility, and were more sensitive to the needs of others," all of which are propositions, goals and aims of the feminist movement).

93. The risk of such a list is that some groups are not included. When I presented this paper to my faculty, a question arose as to how I would handle transgendered persons. *See* Symposium, *(De)Constructing Sex: Transgenderism, Intersexuality, Gender Identity and the Law*, 7 WM. & MARY J. WOMEN & L. 1, 1-216 (2000). *See also* Brown, *Countenance*, *supra* note 2, at 33 ("At a women's law school, white (heterosexual, upper-middle class, able-bodied) women might assume the positions of privilege currently occupied by white men at many law schools. Once gender is removed from the matrix . . . other points of difference could emerge to replicate the conditions that create a need for the school in the first place. Women of color, lesbians, and women with disabilities . . . would receive only partial relief when gender is removed from the equation. The experiences of lesbians and women of color in the women's movement suggest that a women's law school probably would maintain the status quo division of power and privilege. However, when an institution includes people mixed by age, seniority, race, sexual orientation, physical ability and gender, it is easy for privileged women to become so focused on gender that they are blind to the ways other points of difference affect the group dynamic.").

94. *See* Torrey, Ries, & Spiliopoulos, *supra* note 18, at 306 n.185 (discussing DePaul University's "Discover Chicago" Program). For a discussion of the pro bono aspects of this school, see *infra* text accompanying note 97 and note 221.

("PET") seminar. Weeks four through eight will be devoted to studying feminist jurisprudence. Professor Scales will discuss the mediation program, Professor Power will describe the PET training and Professor Free will discuss the women's studies program."

Professor Jewel Scales, a stout woman who looked like Madeline Albright, was dressed in a long velvet dress. "My first law school professor!" I thought excitedly. Professor Scales explained: "Everyone starts out with an intensive five-day mediation seminar.[95] The seminar serves two purposes: to break the ice between students and the faculty, and to introduce you to an alternative approach to the law. The fundamentals of the entrenched legal tradition are adversarial in nature. Its success is measured by the ascension of winners and the degradation of losers. The traditional function of legal counsel is to promote a singular interest at the expense of alternative interests. In our mediation seminar we offer an approach that values commonality of interests, emphasizing processes that bridge differences rather than exploit them, and that make *relationships* the central element in achieving desirable outcomes."

Professor Scales informed us that we would participate in group processes and role-playing as we learned the vital virtues of honesty, listening, patience, and empathy. She stressed that the goal in the first five days was to instill in all first-year students that the law can be a tool in the construction of community, instead of an instrument of its fragmentation.[96]

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95. *See* Lisa Bernstein, *Understanding the Limits of Court-Connected ADR: A Critique of Federal Court-Annexed Arbitration Programs*, 141 U. PA. L. REV. 2169 (1993) (noting the increased use of alternative dispute resolution to solve legal disputes); Michael J. Saks, *Do We Really Know Anything About the Behavior of the Tort Litigation System — and Why Not?*, 140 U. PA L. REV. 1147 (1992) (claiming that 90% of lawsuits filed in tort proceedings result from negotiated settlements); Richard Delgado et al., *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, 1985 WIS. L. REV. 1359 (claiming that alternative dispute resolution is more conducive to overcoming prejudice); Allan Lind et al., *A Cross-Cultural Comparison of the Effect of Adversary and Inquisitorial Processes on Bias in Legal Decisonmaking*, 62 VA. L. REV. 271 (1976); Carrie Menkel-Meadow, *Aha? Is Creativity Possible on Legal Problem Solving and Teachable in Legal Education*, 6 HARV. NEG. L. REV. 97 (2001) (stressing an interdisciplinary approach for teaching alternative courses for students); Renard Strickland, *Legal Education in the Twenty-First Century*, 80 OR. L. REV. 1449, 1456 (2001) ("Mediation is a process of promoting resolution of differences through exploration of mutual gain, looking more to future conduct and possibilities than proving or assigning blame for past actions . . . A comprehensive integration of mediation concepts in the law school program should be pursued. By shifting emphasis from litigation toward early problem solving, the law school can assist in overcoming the competitive attitudes of winning at any cost and some of the dissatisfaction felt by law students, lawyers and clients, as well as countering negative perceptions of lawyers.").

96. Carol Gilligan acknowledged how gender issues play a role in academic institutions, the justice system and the practice of law in her book, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT (1982) (Gilligan argues that females and males develop differently in our society, and as such, approach problem solving differently. To support this conclusion Gilligan studied the different solutions adopted by a male and a female child, Jake and Amy. Gilligan proposed a hypothetical dilemma of a man

She said we would have an opportunity to practice mediation in a variety of legal settings.

After listening to Professor Scales speak, I was looking forward to the mediation seminar. Just the thought of having the opportunity to play the role of a mediator, while at the same time getting to know my classmates and our professors, intrigued me. Professor Scales mentioned that students would have the opportunity to actually go out in the community and acquire pro bono hours by mediating disputes between real clients.[97] I couldn't wait!

Professor Scales explained that after completing the five-day mediation seminar we would spend two days devoted to teaching us how to use the guidelines for legal case analysis,[98] raising awareness of the maleness of legal language,[99] and discussing techniques for how to deal with the stress in law school.[100] She then briefly discussed the content of the stress

whose wife was dying and the medicine needed to treat her was beyond his ability to pay. Jake reasoned deductively that the man should steal the drugs for his wife, believing that the wife's death was worse than the theft. Conversely, Amy wondered whether there was a way of accommodating the two issues, reasoning that the man could work out a deal with the druggist whereby the husband could work off the amount of money needed for the medication. Based on this study, Gilligan theorized that females attempt to first to mediate problems by looking for a connection, through empathy and accommodation. Males, on the other hand, tend to view problems and issues in the abstract, and as "yes" or "no" propositions. Gilligan is among one of the most prominent scholars who have defined gender in psychological rather than sociological terms. She focuses on women's search for connections as a crucial gender difference between men and women).

97. An important component of mediation training is conveying the idea that mediation can be used in many different types of legal disputes. Strickland, *supra* note 95, at 1456 ("Six elements appear important in the law school approach to ADR: . . . Offer ADR courses and clinics for student and lawyer certification as mediators in basic and advanced programs and specialized areas, e.g., business, family, judicial, and community."). *See, e.g.*, Lee G. Knight & Ray A. Knight, *Dispute Resolution with the IRS and Taxpayer Bill of Rights 2*, 13 AKRON TAX J. 27, 48-50 (1996) (discussing guidelines for, and the use of, mediation in disputes with the IRS); Ann C. Hodges, *Dispute Resolution Under the Americans with Disabilities Act: A Report to the Administrative Conference of the United States*, 9 ADMIN. L.J. AM. U. 1007, 1072 (discussing use of mediation in disability discrimination cases). *See also id.* at 1072-73, 1073 n.359 (citing LINDA R. SINGER, SETTLING DISPUTES 140-50 (1990) (describing successful mediation of complex environmental disputes and negotiated rulemaking)).

98. Peter Dewitz, *Legal Education: A Problem of Learning From Text*, 23 N.Y.U. REV. L. & SOC. CHANGE 225, 242 (1997) (where it "took three hours to teach law students to use the guidelines for legal case analysis — put case in context, read case for overview and reread").

99. Karen Busby, *The Maleness of Legal Language*, 18 MANITOBA L.J. 191, 192 (1989) (explores the connection "between language, gender and oppression in the context of the legal register" by looking at the "details of the language" used in legal texts); Sandra Petersson, *Locating Inequality — The Evolving Discourse on Sexist Language*, 32 U. BRIT. COLUM. L. REV. 55, 64 (1998) (asserting that "[generally], male terms exclude women when the law conveys a benefit or privilege; they only include women when the law imposes a burden or penalty").

100. The need for a seminar on stress management in law school is clear from the literature on emotional dysfunction among law students and lawyers. *See* Ann L. Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. LEGAL EDUC. 524,

management portion of the seminar: "This seminar emphasizes that effective stress management requires you to utilize a combination of cognitive, behavioral, and physical strategies.[101] For example, the seminar will address the importance of good rest, a healthy diet, regular exercise, and techniques such as meditation, yoga, visualization, biofeedback, and massage.[102] These habits will be most useful for the stress in the world outside.[103] Although the school does not include exercise as part of its curriculum, we encourage students to maintain their physical health as a way of maximizing academic success and emotional health."

The next person to speak was Professor Power, a strikingly tall black woman with a soft voice. She began by stating: "The third week of your orientation will be devoted to an interactive seminar on personal awareness and the interpersonal dynamic. Here we will explore elements of personality, styles of learning, and elements of leadership, and then discover how our personal attributes respond in both small and large group processes, such as a controlled rendition of the so-called 'prisoner's dilemma' game.[104] This PET seminar has three objectives: first, to foster trust in one's natural attributes while acknowledging the value of difference in others;[105] second, to build leadership skills based upon personal honesty

525 n.5 (1998). "Emotional dysfunction arises long before the stresses of legal practice are encountered. [One study has indicated that,] [e]xcept for somaticism, law students were considerably more dysfunctional in all categories of psychiatric distress than the general public." *Id.* at 525. Another study "demonstrated that law students were within normal psychological ranges when they started law school, but became disproportionately dysfunctional soon thereafter, and experienced increasing dysfunction as they progressed through their legal education. The results of the analyses suggest that law students showed a significant symptom increase between the period before law school begins and the few months after the start of law school; symptoms significantly worsened as law students proceeded from the first year to the third year of the program." *Id.* at 525-26. *See also* Beck et al., *supra* note 10, at 1 (uses statistical analysis to show that significant numbers of practicing lawyers are experiencing a variety of psychological distress).

101. *See generally* Ida O. Abbot, *Practical Strategies for Reducing Stress*, 44 PRAC. LAW 63 (1998) (suggests cognitive, behavioral, and physical strategies for reducing stress).

102. *Id.* at 73 ("Research has shown that regularly practiced intensive relaxation techniques (such as yoga, meditation, and biofeedback) relieve tension, improve health and productivity and increase the length and quality of life.").

103. Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Their Clients*, 7 HARV. NEGOT. L. REV. 1 (2002) (discussing the use of meditation to alleviate "lawyer dissatisfaction," enhance listening skills, and improve negotiation skills).

104. This game requires alternative approaches to winner/loser adversarial orientation. I played a form of this game in my professional responsibility class, dividing my class into two groups, and having a "runner" between the classes. Each class voted black or red and both could be "winners" only if they both voted the same color.

105. Much has been written on women's self-esteem. *See* MAGGIE MULQUEEN, ON OUR OWN TERMS: REDEFINING COMPETENCE AND FEMININITY (1992) (self-esteem may be low in women with stellar credentials if her inner conception of self does not match actual performance). Law school reports on women's loss of self-esteem are numerous. *See* SANDLER, supra note 69; Kimberly A. Daubman et al., *Gender and the Self-Presentation of Academic Achievement*, 27 SEX ROLES 187 (1992) (claiming women have lower estimates of

and integrity, flexibility, and empathy; and finally, to lay foundations for an enhanced sense of personal identity shaped in the community of women, unfettered by the dominant paradigm requiring that the process of individualization be accompanied by a concurrent separation of personal interest from those of our companions."

The next to speak was Professor Free, a somewhat older woman in a wheelchair.[106] She informed us that the remainder of the summer (five weeks) would consist of six areas vital to developing a feminist approach to jurisprudential study:

1. Patriarchy in historical and global perspective[107] its manifestations in religious doctrine,[108] its relationship to power dynamics in the family,[109] and to the public/private dichotomy,[110] all of which have perpetuated female subordination.

2. An overview of perspectives relating to female sexuality, including treatments of lesbianism and heterosexuality, biological and psychological theories of sex difference,[111] societal and religious views of women respecting motherhood,[112] and the sociopolitical aspects of reproductive regulation.[113]

3. An outline/summary of the history of women[114] in Western culture,[115] particularly the dual evolution of legal doctrine[116] as women

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their abilities and performances in public settings).

106. Suzanne Abram, *The Americans with Disabilities Act in Higher Education: The Plight of Disabled Faculty*, 32 J. L. & ED. 1 (2003) (discussing the tenuous situation of many disabled faculty (even tenured faculty) and the relative inability of the ADA to help them). *See also* Symposium on Learning Disabilities: Freedley Hunsicker, *Learning Disabilities, Law Schools and the Lowering of the Bar*, Donald H. Stone, *What Law Schools Are Doing to Accommodate Students with Learning Disabilities*, Laura E. Naistadt, *Understanding Learning Disabilities*, 42 S. TEX. L. REV. 97 (2000) (providing insights and making recommendations as to how law schools can accommodate students with learning disabilities).

107. *See* WOMEN'S STUDIES GROUP, CTR. FOR CONTEMPORARY CULTURAL STUDIES, UNIV. OF BIRMINGHAM, WOMEN TAKE ISSUE: ASPECTS OF WOMEN'S SUBORDINATION (1978).

108. MARY DALY, THE CHURCH AND THE SECOND SEX (1985).

109. BARBARA KATZ ROTHMAN, RECREATING MOTHERHOOD: IDEOLOGY AND TECHNOLOGY IN A PATRIARCHAL SOCIETY (1989).

110. *Id.*

111. SHERE HITE, THE HITE REPORT: A NATIONWIDE STUDY OF FEMALE SEXUALITY (1976).

112. *See generally* JESSIE BERNARD, THE FUTURE OF MOTHERHOOD (1974); TIES THAT BIND: ESSAYS ON MOTHERING AND PATRIARCHY (Jean F. O'Barr et al. eds., 1990).

113. CLIVE WOOD & B. SUITTERS, THE FIGHT FOR ACCEPTANCE: A HISTORY OF CONTRACEPTION (1970); BETSY HARTMANN, REPRODUCTIVE RIGHTS AND WRONGS: THE GLOBAL POLITICS OF POPULATION CONTROL AND CONTRACEPTIVE CHOICE (1987).

114. RUTH ADAM, A WOMAN'S PLACE 1910-1975 (1975); DIERDRE BEDDOE, DISCOVERING WOMEN'S HISTORY: A PRACTICAL MANUAL (1983); SUSAN MOLLER OKIN, WOMEN IN WESTERN POLITICAL THOUGHT (1979).

115. Sonja Starr & Lea Brilmayer, *Family Separation as a Violation of International Law*, 21 BERKELEY. J. OF INT'L LAW 213, 248-49 (2003) ("Western feminism has frequently and notoriously failed to approach gender issues with an adequate understanding of the

assumed changing functions as economic entities, with particular emphasis on this dynamic from the dawn of the Industrial Age to the present. Of particular import in this study would be the distinctions between social classes and between races, especially, although not exclusively, among women.[117] Included here would be a grounding of the history of women in the legal profession and in law school education.[118]

4. An integrated study of the role social institutions have played in the continuing channeling of women into narrow roles at home, in the work place, and in the popular consciousness.[119] Of particular interest would be examinations of the education system[120] and its impact upon the psychological development of girls, and of the mass media,[121] including the sexual stereotyping in television and movies, popular literature, and advertising.

5. An examination of the role traditional psychoanalytic theory has played in perpetuating the patriarchal paradigm, including various theories of "universal" psychological development based on separative principles counter to women's experiences.[122] Included would be an introduction to

problems and perspectives of third world women (as well as western women of color). The need to accent for different forms of oppression is not merely a matter of feminist theorizing; it is of tremendous practical importance.").

116. CATHERINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW (1987).

117. THE THINGS THAT DIVIDE US 11-12 (Faith Conlon et al. eds., 1985) (considering both the positive and destructive aspects of diversity as well as the destructive effects of misunderstanding and separation among women. "The things that divide us can define us and help us claim ourselves; they can also be used against us, as ways of keeping us separate from each other and powerless. Only by writing and talking of our differences can we begin to bridge them.").

118. D. Kelly Weisberg, *Barred from the Bar: Women and Legal Education in the United States 1879-1890*, 28 J. LEGAL EDUC. 485 (1977) (documenting the struggle for women to gain entrance into the legal profession and examining the legal and social rationale used for their exclusion); Donna Fossum, *Law and the Sexual Integration of Institutions: The Case of American Law Schools*, 7 THE ALSA F. 222 (1983) (attempting to document the affect of Executive Order 11375 and the Higher Education Act on the number of women in law schools and the number of women faculty members); CYNTHIA FUCHS EPSTEIN, WOMEN IN LAW (1993) (providing a historical account of women entering the legal profession beginning in 1910 through 1983. Included is the socio-economic status of women who apply to law school, what happens to women once they enter law school, challenges faced by women in practice and the effect of women's private lives).

119. NANCY M. HENLEY, BODY POLITICS: POWER, SEX AND NONVERBAL COMMUNICATION (1977).

120. *See* GENDER INFLUENCES IN CLASSROOM INTERACTION (Louise Cherry Wilkerson & Cora B. Marrett eds., 1985); Jane Martin, *Bound For the Promised Land: The Gendered Character of Higher Education*, 4 DUKE J. GENDER L. & POL'Y 3 (1997).

121. MOLLY HASKELL, FROM REVERENCE TO RAPE: THE TREATMENT OF WOMEN IN THE MOVIES (2d ed. 1987).

122. MARY ELENE WOOD, THE WRITING ON THE WALL: WOMEN'S AUTOBIOGRAPHY AND THE ASYLUM (1994); PHYLLIS CHESLER, WOMEN AND MADNESS (1989); Sandra Lee Bartky, *On Psychological Oppression*, *in* PHILOSOPHY & WOMEN 33 (Sharon Bishop & Marjorie Weinzweig eds., 1979).

theories of "women's psychology," including the work of Carol Gilligan,[123] Nancy Chodorow,[124] and others.

6. And finally, an examination of the history and evolution of families in the United States, with special emphasis on the emergence of "alternative" family structures, the profound influences of race and ethnic culture on family function and make-up, and the plight of children in today's society.[125]

CURRICULUM

Our professors and several student tutors then explained the first-year curriculum to us. I felt that the format provided a nice balance between listening to our professors' perspectives on the curriculum and listening to the experiences and perspectives of our peers. Professor Learned, a middle-aged woman with long red hair, provided us with an overview of our first-year courses. This brief introduction also included a description of the school's teaching philosophy that the faculty had adopted and how our progress would be evaluated.[126] She explained, "the first and second semesters of your first year will consist of five courses: Contracts, Torts,

123. GILLIGAN, *supra* note 96. *But see* Lucinda M. Finley, *Transcending Equality Theory: A Way Out of the Maternity and the Workplace Debate*, 86 COLUM. L. REV. 1118, 1154 n.158 (1986); Hon. Ruth Bader Ginsburg, *Some Thoughts on the 1980s Debate Over Special Versus Equal Treatment for Women*, 4 LAW & INEQ. 143, 148 (1986); MACKINNON, *supra* note 116, at 38-39; Ellen C. DuBois et al., *The 1984 James McCormick Mitchell Lecture: Feminist Discourse, Moral Values, and the Law-A Conversation*, 34 BUFF. L. REV. 11, 27 (1985).

124. NANCY CHODOROW, THE REPRODUCTION OF MOTHERING: PSYCHOANALYSIS AND THE SOCIOLOGY OF GENDER (1978).

125. FOR CRYING OUT LOUD: WOMEN AND POVERTY IN THE U.S. (Rochelle Lefkowitz & Ann Withorn eds., 1986); THERESA AMOTT & JULIE MATTHAEI, RACE, GENDER AND WORK: A MULTICULTURAL ECONOMIC HISTORY OF WOMEN IN THE UNITED STATES (1991); *See generally* RETHINKING THE FAMILY: SOME FEMINIST QUESTIONS (Barrie Thorne & Marilyn Yalom eds., 1992).

126. *See* Sarah E. Thiemann, *Beyond Guinier: A Critique of Legal Pedagogy*, 24 N.Y.U. REV. L. & SOC. CHANGE 17, 35 nn.116-17 (1998) ("Several law school pedagogical theorists have posited that role playing can serve useful purposes in the classroom. It provides a variety from normal class structure, encourages creative thinking, forces students to imagine the perspectives of parties to a case, and taps into different sorts of theoretical frameworks than the Socratic Method does."). *See also* James Eagar, *The Right Tool for the Job: The Effective Use of Pedagogical Methods in Legal Education*, 32 GONZ. L. REV. 389, 407-09 (1996- 1997); Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Teaching Styles*, 62 ALB. L. REV. 213 (1998) (discussing studies conducted that show that law students are diverse in their learning styles and that law professors should be teaching using various methods, rather than strictly Socratic or Case method, to reach the different "clusters" of learning styles within the legal classroom); Kevin H. Smith, *"X-file" Law School Pedagogy: Keeping the Truth Out There*, 30 LOY. U. CHI. L.J. 27, 36 (1998) (offering a tongue in cheek discussion of law school pedagogical methods. "In order to minimize learning and maximize anxiety and terror, you should be sure, of course, that you offer the students absolutely no insight into such matters as how to dissect cases, the parts of a case, the purpose(s) of each part of the case, or why courts include each type of information in the case.").

Civil Procedure, Criminal Law and Introduction to Legal Research, Writing and Skills. These courses will be taught from perspectives reflecting the approaches that characterize feminist foundations laid in the eight-week summer program. Such perspectives will become more apparent as you listen to the student tutors describe the courses."

Professor Learned was impressive in her speech and continued: "It is clear that women need analytic skills in order to dissect ideas, develop critical perspectives, and communicate effectively in speech and writing. The difference in this school is that such skills are not projected through the dark lens of a perspective not our own. The ability to separate, categorize, and atomize is made effective only if it aids one to understand the state of the whole. This is the difference between viewing life through a microscope and seeing a molecule of carbon, and viewing it through one's original eye and knowing one is holding a diamond."[127]

Professor Learned continued: "At this school, we focus more on collaboration, cooperation, and the development of interpersonal, communication and learning skills, rather than simply developing analytical skills.[128] We, as faculty, prefer to use role-playing,[129]problem

127. *See* Lucinda Finley, *Women's Experience in Legal Education: Silencing and Alienation*, 1 LEGAL ED. REV. 101 (1989) (documenting anger and alienation among women law students because gender is ignored in the legal curriculum); Jurate Jason et al., *The Women Law Student: The View From the Front of the Classroom*, 24 CLEV. ST. L. REV. 223 (1975) (survey suggesting that while typical law professor gives lip service to equal opportunity, he harbors discriminating beliefs as to women's presence in the profession and suitability for certain fields of law); Andrew S. Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CINN. L. REV. 91 (1968) (describing the psychological and social characteristics of the law student and faculty member, the psychological dynamics of legal education); Judith D. Fischer, *Portia Unbound: The Effects of a Supportive Law School Environment on Women and Minority Students*, 7 UCLA WOMEN'S L.J. 81 (1996) (personal account of the supportive methods used at Chapman University School of Law that benefit women and minority students); Gaber, *supra* note 57, at 196 ("In some cases, the alienation from content was related to the "Law and Economics" paradigm that is so prevalent at the Yale Law School. This framework for examining the law tended to exclude other frameworks that women may have found more relevant or useful. Contextual learning and practical knowledge also seemed excluded from the classroom, and this in turn drove many women away from the discussion."); Marjorie L. Girth, *UB's Women in the Law: Overcoming Barriers During Their First Hundred Years*, 9 BUFF. WOMEN'S L. J. 51 (2000) (discussing the data regarding performance in law school for white and minority women both historically and in the present).

128. *See* Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, 45 STAN. L. REV. 1547, 1563 (1993); Brown, *Countenance*, *supra* note 2, at 19-20 ("Many women law students dislike both the process of competition and its results. It is tempting to argue that a women's law school could remedy this by de-emphasizing competition and instead cultivating students' cooperative, problem solving skills."); Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School,"* 38 J. LEGAL EDUC. 61, 79-80 (1988) ("Feminist educators seek to question traditional notions of authority in the classroom by sharing leadership in the classroom, replacing competition with an atmosphere of trust and cooperation, integrating affective and intellectual learning, and by using personal experience

solving,[130] storytelling,[131] and brainstorming[132] in our classrooms, over the

as a valid source of knowledge."); Malkah T. Notman & Carol C. Nadelson, *A Review of Gender Differences in Brain and Behavior*, *in* WOMEN AND MEN: NEW PERSPECTIVES ON GENDER DIFFERENCES 24 (Malkah T. Notman & Carol C. Nadelson eds., 1990) ("[W]omen favor a 'communicative mode' in gaining knowledge about the world and in dealing with others. For example, from birth, female infants are more sensitive to sounds, particularly the mother's voice. As babies, females orient more to tone than males and are more startled by loud noises. They maintain enhanced hearing throughout life. In other sensory skills, girls have been shown to do better than boys: girls have increased skin sensitivity, they are more proficient in fine motor performance, and they do better at rapid sequential movements. . . . Boys are different in that different stimuli attract their attention; females are more attentive to social contexts such as faces, speech patterns, and tones of voice. Female infants can speak sooner, and throughout life, women do better on a number of measures of linguistic ability."); *See* Leslie L. Cooney & Lynn A. Epstein, *Classroom Associates: Creating a Skills Incubation Process for Tomorrow's Lawyer*, 29 CAP. U. L. REV. 361 (2001) (describing a lawyering skills program at Nova Southeastern University School of Law that emphasizes cooperative, collaborative and interactive training of students to solve real-life problems in either transaction or litigation work); Banu Ramachandran, *Re-Reading Difference: Feminist Critiques of the Law School Classroom and the Problem with Speaking From Experience*, 98 COLUM L. REV. 1757 (1998) (examining the empirical studies concerning marginalization of minority and women students in law school and places them in the context of a history of feminist theory to illustrate their "fatal flaws." The Note also examines the current feminist treatment of lesbian-baiting in the law school classrooms and suggests new direction for feminist efforts). *See* LOUISE HARMAN & DEBORAH POST, CULTIVATING INTELLIGENCE: POWER, LAW, AND THE POLITICS OF TEACHING (1996) (personal account by two professors from critical examination of their own teaching practices, using cognitive theory and experiences with alternative approaches to law school pedagogy).

129. *See* Thiemann, *supra* note 126, at 35 & nn.116-17 ("Several law school pedagogical theorists have posited that role playing can serve useful purposes in the classroom. It provides a variety from normal class structure, encourages creative thinking, forces students to imagine the perspectives of parties to a case, and taps into different sorts of theoretical frameworks than the Socratic Method does."). *See also* Eagar, *supra* note 126, at 407 (describing the benefits of role playing in heightening student interest, motivating learning, and integrating theory and practice); Angela P. Harris and Marjorie M. Shultz, *"Another Critique of Pure Reason": Toward Civic Virtue in Legal Education*, 45 STAN. L. Rev. 1773, 1798 (1993) (requires student in criminal law class to act both as prosecutors and as public defenders so "it will be harder to reduce either side to a caricature"); Nancy L. Shultz, *How Do Lawyers Really Think?*, 42 J. LEGAL EDUC. 57, 67 (1992) (advocating the use of exercises and approaches "to teaching material that requires the student's active involvement and immersion in a concrete aspect of the problem under discussion").

130. *See* Myron Moskovitz, *Beyond the Case Method: It's Time to Teach With Problems*, 42 J. LEGAL EDUC. 241 (1992) (advocating the replacement of the case method with the problem method to better train lawyers for the real world); Cynthia G. Hawkins-Leon, *The Socratic Method-Problem Method Dichotomy: The Debate Over Teaching Methods Continues*, 1998 BYU EDUC. & L.J. 1, 7 & nn.36-37 ("The Problem Method purports to offer all of the benefits of the Socratic Method plus more. [T]he Problem Method has been described as the major alternative to the Socratic Method of Teaching.").

131. Thiemann, *supra* note 126, at 37-38 ("Storytelling can add an often-lacking creative element to the classroom and provides context for the material. Storytelling is also crucial because, to a certain extent, our legal system is based upon the narration and retelling of facts. Thus, it is important for law students to learn storytelling techniques so that they can use them in their representation of clients."). *See also* Jane B. Baron & Julia Epstein, *Is Law Narrative?*, 45 BUFFALO L. REV. 141 (1997) (arguing that stories in law can be helpful as a way of elucidating how meaning is made in legal contexts); Jane Baron,

more rigid Socratic Method.[133] Your classes will be small — no more than 20 to 30 students per class section.[134] At this school, we do not 'measure

Resistance to Stories, 67 S. CAL. L. REV. 255 (1994) (examining the vehement resistance to legal storytelling, claiming that storytelling can be provocative and often misread); William N. Eskridge, Jr., *Gaylegal Narratives*, 46 STAN. L. REV. 607 (1994) (asserting that storytelling's value is expanding legal debate and causing social transformation by illuminating legal issues from perspectives of minority groups frequently excluded from political and academic debate); Carolyn Grose, *A Field Trip to Benetton . . . And Beyond: Some Thoughts on "Outsider Narrative" In a Law School Clinic*, 4 CLINICAL L. REV. 109 (1997) (exploring the process of teaching students to listen and accept different versions of reality in several contexts, including the clinic/client story and the narratives in sexual harassment law); Jean C. Love, *The Value of Narrative in Legal Scholarship & Teaching*, 2 J. GENDER RACE & JUST. 87 (1998) (arguing that in law school clinics part of the challenge is teaching law students to "hear and believe their clients' stories" because of the socio-economic and educational differences between the law student and the clinic client. Grose suggests that this can be overcome by helping the students accept different realities through the use of outsider narrative); Binny Miller, *Telling Stories About Cases and Clients: The Ethics of Narrative*, 14 GEO. J. LEGAL ETHICS 1, 4 (2000) ("Telling stories about clients raises different issues than telling stories about litigants from published cases or media accounts, characters in books, or the author's own life. Even if the ethical rules governing client confidentiality permit this practice where the client's identity is not disclosed, the client focus of collaborative lawyering approach suggests that legal academics need to consider whether clients should have a say in decisions about how their stories are told."); George A. Martinez, *Examining the Limited Legal Imagination in the Traditional Legal Cannon: Philosophical Considerations and the Use of Narrative in Law*, 30 RUTGERS L.J. 683 (1999) (discussing the use of narrative as a means to offer perspectives that would not otherwise be represented in mainstream legal discourse).

132. Thiemann, *supra* note 126, at 33 ("Brainstorming is an effective method when a new concept is introduced to the classroom. Brainstorming sessions harness students' energy and creativity, and place no idea on a higher plane than another. Students need to have the chance to take risks and go out on a limb.").

133. *See* Brown, *Countenance*, *supra* note 2, at 11-12, 12 n.50. "Many women reveal their alienation from law school by participating only rarely in class." *Id.* at 11. "Some writers suggest that the Socratic method lies at the heart of women's silence." *Id.* at 11-12. One writer stated that, "'[D]epending on how it is used, [the Socratic method can] undermine the credibility of women students and effectively silence their voices.'" *Id.* at 12. *See also* Torrey, Ries, & Spiliopoulos, *supra* note 18, at 281 nn.78-79 ("Many female professors criticize the Socratic method, particularly during first year, as confrontational and subject to abuse. These professors note that women who displayed a lack of confidence in a Socratic setting seemed to blossom when taught in a less intimidating manner."); Rhode, *supra* note 128, at 1555 & nn.31-32. *See also* Guinier, *Becoming Gentlemen: Women's Experiences*, *supra* note 14, at 46 (Many women report that "when speaking feels like a 'performance,' they respond with silence rather than participation, especially when the Socratic method is employed to intimidate or to establish a hierarchy within large classes. This pressure to speak is especially problematic for students who perceive that they are expected to perform as spokespersons for the racial or gender group."); Jennifer L. Rosato, *The Socratic Method and Women Law Students: Humanize, Don't Feminize*, 7 CAL. REV. L. WOMEN'S STUD. 37 (1997) (advocating keeping the Socratic Method but fostering an ethic of care in the classroom.); David D. Garner, *Socratic Misogyny? – Analyzing Feminist Criticisms of Socratic Teaching in Legal Education*, 2000 BYU L. REV. 1597 (2000); Patricia Mell, *Taking Socrates' Pulse: Does The Socratic Method Have Continuing Vitality in 2002?*, 81 MI. BAR J. 46, 46 (2002) ("Criticism of the [Socratic] method gained momentum as women and minorities entered law schools in larger numbers and found the Socratic method environment hostile to learning.").

134. *See* Thiemann, *supra* note 126, at 30 & nn.89, 93 ("The intimacy of smaller

your performance' by administering a traditional time-pressured examination at the end of the semester.[135] Instead, you will have the opportunity to demonstrate your abilities by completing take-home examinations,[136] research papers,[137] and written analyses of lessons gained

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classes allows students to gain comfort and forge relationships with both their peers and professors. Once this intimacy is achieved, students will be more willing to take risks in presenting and defending their ideas, voicing less popular views, and opposing majoritarian views than they might otherwise. The smaller classroom can also be a place for confidence building. Some women remark that they notice that their self-confidence rises in smaller classes."). *See also* Moskovitz, *supra* note 130, at 261 ("Small classes are best for students, no matter what the teaching method. Students in small classes receive more individual attention from the instructor, and the instructor is able to do things that are not feasible in large classes.").

135. *See* Thiemann, *supra* note 126, at 39 ("Law professors need to use alternative means of evaluation in addition to the current method, where one examination determines the entire grade. Many students find testing procedures to be intimidating and not representative of their true abilities. Kate Silbaugh posited that women, in particular, have more trouble on law exams because they are more reluctant to make a choice hastily, and represent that side zealously, as a law exam forces students to do. Women, she said, are more contemplative with their choices and need more time to carefully make a decision."). *See also* Philip C. Kissam, *Law School Examinations*, 42 VAND. L. REV. 433 (1989) (exploring the values, limits, and adverse effects of modern law school examinations and describing practices that could improve the quality of legal education); Ian Weinstein, *Testing Multiple Intelligences: Comparing Evaluation by Simulation and Written Exam*, 8 CLINICAL L. REV. 247 (2001) (evaluating law students abilities with a range of legal skills and determining that legal academia has to come up with more evaluative methods than the final exam to reflect the diversity of necessary legal skills for the practicing lawyer); Philip C. Kissam, *The Ideology Of the Case Method/Final Examination Law School*, 70. U. CINN. L. REV. 137, 156 (2001) (stating that the final examination method of grading and ranking is "weakly justified at best" Kissam argues that it is "[un]clear that the monolithic practice of final examinations is necessary to prepare students for bar examinations or that students work harder because of their final examinations. All we really know is that they work differently from how they would work under other evaluation methods . . . The need to prepare or consult extensive outlines of the doctrinal materials that are called for by final examination questions may undercut students' attention to the richer aspects of the case method, especially as they discover more efficient ways to prepare for examinations than vigorous attention to the case method.").

136. *See* Thiemann, *supra* note 126, at 38 ("Law professors should be encouraged to offer traditional style law exams removed from the 'pressure cooker' atmosphere of time-limits.").

137. *Id.* at 39 & n.145 ("Providing a paper-writing option gives students a chance to show their abilities without the stress of the traditional law exam. Many students claim that their abilities to write in a relaxed environment are significantly better than when under pressure. . . . Papers tap into different, and perhaps more important skills than do exams such as editing and revision [and] . . . allow students a break from the process of 'writing furiously, regurgitating all of the theories and maxims culled from the classroom.' They allow students to bring in ideas they have developed over the semester rather than forcing them to simply replay material."). *See also* Schultz, *supra* note 129, at 72 & nn.60-61 ("Lawyers have access to libraries, files, clients, and colleagues. They can consult any and all of these sources in a time frame over which they have much more control than that presented in an exam setting. If we teach our students to make the most effective use of all available resources and to exercise appropriate judgment in doing so, we have accomplished part of our objective. . . . [W]e can use take-home exams, research papers, and written analyses of lessons gained from role playing and simulation to gain detailed information about what our students are taking away from their classroom experience."); Pearl Goldman

from role playing and simulation.[138] No grades are unilaterally issued to the student by the professor teaching the course.[139] Rather, your progress will be evaluated primarily in two ways: (1) you will work in concert with professors and other classmates to evaluate your progress and (2) you will be required to complete self-assessments of your progress.[140] At the end of the first, second and third years, 'bar examination simulations' will be administered and a week-long refresher course given on each of the topics taught that year and covered on the bar of the state where you might want to practice."

Professor Startwell was next introduced, and she delivered a very interesting presentation on the content of our Introduction to Legal Research, Writing and Skills course. She stated that one of the faculty's main goals in teaching the course is to provide an interesting and effective context for teaching not only legal research, reasoning, and writing,[141] but

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& Leslie Larkin Cooney, *Beyond Core Skills and Values: Integrating Therapeutic Jurisprudence and Preventive Law Into The Law School Curriculum*, 5 PSYCHOL. PUB. POL'Y & L. 1123 (1999); Filippa Marullo Anzalone, *It All Begins With You: Improving Law School Learning Through Professional Self-Awareness and Critical Reflection*, 24 HAMLINE L. REV. 324, 337 (2001) ("Writing, especially journaling, has been identified as an effective means of self-reflection. Whatever the techniques, however, self-reflection empowers students, teachers, and practicing lawyers to become more aware of what they do and, thus, more able to improve what they are doing."); James Jay Brown, *Forging An Analytic Mind: The Law School Classroom Experience*, 29 STETSON L. REV. 1135 (2000) (reviewing undergraduate education and contrasting it to the law school experience).

138. Schultz, *supra* note 129, at 72.

139. *See* Rhode, *supra* note 128, at 1557 & n.43 ("The competitive dynamic of classroom culture is exacerbated by grading practices calculated more to rank than to instruct. Students receive little formal feedback aside from examination, which provide few constructive comments and test only a small fraction of the skills relevant to lawyering.").

140. LEARNING ENVIRONMENTS FOR WOMEN'S ADULT DEVELOPMENT: BRIDGES TOWARD CHANGE 22-24 (Kathleen Taylor & Catherine Marienau, eds., 1994) ("In order for women to develop their minds and identities, they must also develop their voice — they must become comfortable with their voice and be willing to express it. In this regard, self-assessment can be likened to singing in the epistemological shower."). *See* Jeffrey Evans Stake, *Making the Grade: Some Principles of Comparative Grading*, 52 J. LEGAL EDUC. 583 (2002) (discussing five grading principles — equalize means, equalize standard deviations, use numerous grade intervals, maintain proportional intervals, keep the no-credit grades reasonably close to the mean and avoid grade inflation).

141. *See* Lucia Ann Silecchia, *Legal Skills Training in the First Year of Law School: Research? Writing? Analysis or More?*, 100 DICK. L. REV. 245, 269 n.87, 275 n.106 (1996) ("[R]esearch and writing . . . have been repeatedly identified as the two most basic skills needed by competent attorneys. [Further,] [i]t can also be argued, quite persuasively, that research and writing are the two basic 'foundational skills' upon which a great deal of a student's subsequent law school success depends."); Phyllis G. Coleman, Robert M. Jarvis & Ronald A. Shellow, *Law Students and the Disorder of Written Expression*, 26 J. L. & EDUC. 1 (1997) (discussing the issues surrounding law school applicants with Disorder of Written Expression (DWE) and possible ADA claims associated with denying those applicants admission based on their writing disabilities or accommodations that should be made to them if they are accepted into law school); Suzanne E. Rowe, *Legal Research, Legal Writing, and Legal Analysis: Putting Law School Into Practice*, 29 STETSON L. REV. 1193, 1193-94 (2000) ("Instead of memorizing cases that would solve easy problems, I learned that researching, analyzing, and writing about the law occurs as a complex,

also professional skills such as practice techniques,[142] decision making, judgment, and creative thinking.[143]

Professor Startwell painted a picture of what kind of experience awaits us during the first semester of the course: "From the first day, we will encourage you to view yourself as a professional in training.[144] We will encourage you to think about what it means to be a lawyer, and what the lawyer's roles and responsibilities are, or should be, with respect to clients, colleagues, and the legal system.[145] During the first class, you become senior partners in a law firm.[146] You will receive a single fact pattern, with a few facts to get you started,[147] and will then randomly be assigned to represent either the plaintiff or the defendant for a year-long legal dispute.[148] After conducting preliminary research on the issues, you will

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interwoven process. That process — not magic — is the practice of law. In all your law school classes you will learn analysis. In classes devoted to legal research and writing, you will get to weave analysis into research and writing and learn to practice law.").

142. Such practice techniques include: interviewing, counseling, drafting pleadings and other legal documents, case planning, negotiation and oral advocacy. *See* Nancy M. Maurer & Linda Fitts Mischler, *Introduction to Lawyering: Teaching First-Year Students to Think Like Professionals*, 44 J. LEGAL EDUC. 96, 103 (1994). *See also* Silecchia, *supra* note 141, at 280 n.123 ("[A skills-based] program might include oral advocacy, fact investigation, client interviewing and counseling, legal drafting, law office management, professional responsibility, alternate dispute resolution and trial skills.").

143. Maurer & Mischler, *supra* note 142, at 100.

144. *Id.* at 101.

145. *Id.* ("[O]pportunities abound for examining issues of professional responsibility. Traditional legal writing assignments allow exploration of issues such as the duty to inform clients in client letters and the duty to disclose adverse authority in trial briefs. Such issues as the duty to keep client communication confidential can also be addressed in the context of client interviewing and the development of the lawyer-client relationship. The difference between zealous advocacy and frivolous action can be explored in the context of drafting pleadings. Similarly, the difference between exaggerating (puffing) and purposely misleading can be explored in the context of negotiating."). *See also* Deborah L. Rhode, *Ethics by the Pervasive Method*, 42 J. LEGAL EDUC. 31 (1992); Morin, *Reflections on Teaching Law*, *supra* note 23, at 267; Therese Maynard, *Teaching Professionalism: The Lawyer as a Professional*, 34 GA. L. REV. 895 (2000) (discussing the lawyer as professional, the qualities that make the professional lawyer, such as compassion, communication skills, and a sense of perspective, and the teaching methods used to hone these skills in the legal classroom); Russell G. Pearce, *Legal Ethics Must Be the Heart of the Law School Curriculum*, 26 J. LEGAL PROF. 159, 160 (2002) (advocating a greater focus on legal ethics in law schools by making it a first-year course and stressing that legal ethics are a fundamental component of what it means to be a lawyer).

146. Maurer & Mischler, *supra* note 142, at 108.

147. *Id.* at 103, 108 ("We do not present facts to students directly; they have to figure them out. As the case develops, students discover facts are not static, but subject to dispute. They realize that there is room for creativity in deciding what facts to present to a court.").

148. *Id.* at 99, 104, 106 ("By using a single yearlong hypothetical problem as a framework for developing and integrating a variety of skills . . . students are able to see their research as part of the process, practice and study of law."). *See also* Silecchia, *supra* note 141, at 280-81 ("A broad-based first year skills course could be structured around a hypothetical case, beginning with a simulation of the initial client interview, and then moving into discussions of the business practicalities of finding and maintaining a clientele, potential ethical issues raised by the client's problem, and possible responses to the client's

realize that you need more information.[149] A client interview will be the starting point for gathering the information that you need.[150] After the interview, you will receive a transcript of the client interviews so all of you in the 'firm' have the same facts available for future assignments.[151] Following the interviews, you will prepare an objective memorandum and will then draft a letter to your clients advising them about the issues and the alternatives to litigation."[152]

Professor Startwell continued, "At the beginning of your second semester, we will divide your 'firm' into teams of four students.[153] You will work together as a team to draft a complaint and the answer to a sample complaint that has been prepared by your professors.[154] Next, after receiving written materials and participating in lectures and discussions on discovery, you will draft interrogatories and then draft answers to the interrogatories you receive from a team from the other 'firm.'[155] You may recall Professor Scales telling you that you will complete a five-day-long seminar on mediation during the beginning of your first semester. Well, you will be excited to learn that in your Introduction to Legal Research, Writing and Skills course, you will have the opportunity to try your hand at another form of alternative dispute resolution — negotiation.[156] After completing the exercises on discovery, you will develop a negotiation

questions. Students could then evaluate the alternatives and begin the work of representing the client, writing client letters, researching office memoranda, [and] drafting and arguing motions. . . . In such a course, the research and writing process has much greater context because students see . . . the ways in which research and writing are closely related to broader issues in the practice of law.").

149. Maurer & Mischler, *supra* note 142, at 109.

150. *Id.* at 103 ("Client interviewing . . . serve[s] at least two distinct purposes besides introducing interviewing techniques. First, interviewing illustrates how a case develops. The traditional first-year law curriculum exposes students to final case decisions and appeals in which the facts have already been determined by a court. [S]tudents in [this course][will] see how the initial client interview is just one step toward building a case. Second, the interview exercises introduce students to the significance of the initial lawyer-client relationship. Students see how the rapport they develop with a client, and the questions they pose, affect the information they receive.").

151. *Id.* at 109.

152. *Id.* at 109, 111-12. *See also* Silecchia, *supra* note 141, at 284-85 n.137-39 ("Too many first-year courses limit student writing projects to the objective office memorandum and the appellate brief. However, there are many other ways in which lawyers write. There are, therefore, many other ways in which law students should be taught to write. For example, lawyers write letters, draft complaints and other pleadings, write memoranda advising clients, compose short articles for professional magazines, draft model legislation and regulations . . . and propose settlement agreements or plea bargains. A legal writing course should require students to write as many of these different types of documents as possible. Doing so will improve the students basic training in research and writing and will expose them to a broader range of legal skills.").

153. Maurer & Michler, *supra* note 142, at 109.

154. *Id.*

155. *Id.* at 110.

156. *Id.*

strategy consistent with your team's theory of the case and the client's goals.[157] You will then participate in a simulated negotiation with the other team."[158]

Professor Startwell completed her presentation by mentioning the final three assignments of the course. "You will also gain experience in writing a persuasive memorandum to the trial court in support of, or in opposition to, a motion for summary judgment.[159] By the time they completed the persuasive memorandum, many of my former students were anxious to step into their 'advocacy shoes.'[160] As the final assignment of the semester, you will write an appellate brief based on a trial court decision prepared by the instructors.[161] You will then participate in oral arguments based on your appellate brief.[162] And there you have it — the framework for Introduction to Legal Research, Writing and Skills."

Professor Startwell shared that she was looking forward to getting to know all of us and then introduced Maria Tresanno — a third-year student who will be a tutor for Professor Deal's contracts class. Maria began her presentation by challenging us: "When you hear the word 'contract,' what comes into your mind?" Everyone took a second or two to think about the question. Then one of my classmates shared: "When I think of a contract, I think of the commercial world and the marketplace." I had a similar notion of contracts and thought that the content of the course would consist mainly of cases drawn from the commercial context.[163] As I listened to Maria's presentation on Professor Deal's course, I realized that there was another dimension to the world of contracts.

Ms. Tresanno: "Professor Deal is an amazing professor. When I heard the word 'contract,' I too thought about the commercial world, the marketplace, the public world, economic interests, and rational self-interested bargaining.[164] But Professor Deal's course is about more than

157. *Id.* at 111.

158. *Id.*

159. Mauer & Michler, *supra* note 142, at 112.

160. *Id.*

161. *Id.*

162. *Id.* at 113.

163. *See* Marjorie Maguire Shultz, *The Gendered Curriculum: Of Contracts and Careers*, 77 IOWA L. REV. 55 (1991); Mary Jo Frug, *Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook*, 34 AM. U. L. REV. 1065 (1985) [hereinafter Frug, *Re-Reading Contracts*]; Mary Jo Frug, *Rescuing Impossibility Doctrine: A Postmodern Feminist Analysis of Contract Law*, 140 U. PA. L. REV. 1029 (1992) [hereinafter Frug, *Impossibility Doctrine*] (critiqing the impossibility doctrine by analyzing, through a postmodern feminist lens, three law review articles on the subject); Debora L. Threedy, *Feminists and Contract Doctrine*, 32 IND. L. REV. 1247 (1999) (discussing the influence of historical gender bias, and more recent feminism on modern contract law); Lenor Ledwon, *Storytelling and Contracts: Casebook Review Essay*, 13 YALE J.L. & FEMINISM 117 (2001) (reviewing AMY HILSMAN KASTLEY, DEBORAH WAIRE POST & SHARON KANG HOM, CONTRACTING LAW (2d ed. 2000).

164. Marjorie Maguire Shultz, *supra* note 163, at 56.

just contracts in the commercial world. On the first day of class, Professor Deal told us, 'I want all of you to walk out of this class at the end of the semester not only with an understanding of the fundamental concepts of contract law, but also with an understanding that there are relational aspects to the commercial world. As you will learn throughout my course, there are emotional, personal, intangible and non-economic factors in marketplace agreements.'"[165]

It was apparent to Maria at this point that we were all intrigued at her description of the course. She continued, "I remember the first topic we covered in the contracts course — contractual agreements and disputes involving reproductive technology and surrogacy arrangements.[166] In studying such agreements, I became familiar with the basic contract concepts of intention, expectation, reliance, and consideration.[167] Equally important, our class discussed the dichotomy between the realm of contracts and the realm of family and the court's invalidation of commercial surrogacy agreements.[168] Throughout the semester, we also explored contracts involving the obligations and expectations of pre-marital, post-divorce, and non-marital relationships and other contracts regarding marital property."[169]

At this point in the presentation, Maria asked if we had any comments or questions. I am not sure what came over me, but I raised my hand and asked: "Did your class discuss the gendered nature of any traditional contract rules, principles, and values?" Maria responded: "Great question! We did discuss these issues and I am happy to share with you the content of one such discussion. One of the core concepts you will learn in your contracts course is that of consideration. Yet, the determination of the kinds of work, products, and promises that are deemed valuable as consideration under traditional contract doctrine seems to be very gender-biased.[170] One of my fellow classmates made the observation that

165. *Id.* at 57-58. *See also* Patricia A. Tidwell and Peter Linzer, *The Flesh-Colored Band Aid: Contracts, Feminism, Dialogue and Norms*, 28 HOUS. L. REV. 791, 795-96 (1991) (discussing the foundation of relational contract theory); Stewart Macaulay, *An Empirical View of Contract*, 1985 WIS. L. REV. 465 (1985); IAN R. MACNEIL, THE NEW SOCIAL CONTRACT: AN INQUIRY INTO MODERN CONTRACTUAL RELATIONS (1980); John E. Murray, *Contract Theories and the Rise of NeoFormalism*, 71 FORDHAM L. REV. 869 (2002) (discussing use of both neoclassicism and neoformalism to assist courts in refining the contract doctrine, ultimately settling on neoclassicism as the better of the two for that purpose).

166. Marjorie Maguire Shultz, *supra* note 163, at 61.

167. *See* Frug, *Re-Reading Contracts*, *supra* note 163, at 1090 n.84-85 ("The disputes involving reproductive technology . . . raise very traditional, basic contract issues such as problems of consideration, assent, and the interplay between private ordering and social control."). *See also* Marjorie Maguire Shultz, *supra* note 163, at 63.

168. *See* Marjorie Maguire Shultz, *supra* note 163, at 63.

169. Tidwell & Linzer, *supra* note 165, at 804.

170. *See* Marjorie Maguire Shultz, *supra* note 163, at 58; Anita Bernstein, *A Feminist Revisit to the First-Year Curriculum*, 46 J. LEGAL EDUC. 217, 219 (1996).

"contracts doctrine views everything that women do and value as donative or illusory, as being a moral obligation or a pre-existing duty, or as being in some way noncognizable or unenforceable."[171] Because of their family roles, women often take part in meaningful transactions that do not have a ready cash value — cleaning the house, raising the children, giving of comfort, and cooking meals — yet these are usually insufficient to support a contract.[172] At the end of the class period involving this discussion concerning consideration, Professor Deal commented that greater attention to the experiences in women's lives and relationships would directly affect the law's approach to value and valuation."[173]

The next student tutor to speak was Chellie Middleyear, a second-year student who would be our tutor for Torts. She first defined what a tort was and then told us that the class would include issues of significance to women's lives and would explore the gender impact of tort doctrines. "All of you," she said, "will begin to appreciate that life experience is relevant to legal development and critique.[174] In this course, you will apply feminist insights, methodologies, critiques and deconstructions to substantive areas of tort law."[175] She said that Professor Twist, who taught the course,

171. Marjorie Maguire Shultz, *supra* note 163, at 64 & n.35. "What my student saw so clearly was that the law judges as 'nothing' many expectations and reciprocities that are at the core of women's lives and relationships." *Id.* at 65. *See also* Frug, *Re-Reading Contracts*, *supra* note 163, at 1077-83.

172. Tidwell & Linzer, *supra* note 165, at 805. *See also* Marjorie Maguire Shultz, *supra* note 163, at 64 ("[U]nrelied-upon donative promises are not enforceable. . . . [S]elf-interested bargaining remains the privileged form of interaction. . . . Because donative promises often arise out of relations of trust and interpersonal intimacy, they are asserted to be more emotionally and less deliberately made, to create less intense disappointment when broken, and to possess less social utility than those deriving from self-interested exchange."); Harris & Schultz, *supra* note 129, at 1790-91 (examining emotions in various business and contract topics in law school).

173. Tidwell & Linzer, *supra* note 165, at 805.

174. Lucinda M. Finley, *A Break in the Silence: Including Women's Issues in a Torts Course*, 1 YALE J.L. & FEMINISM 41, 73 (1989) (advocating including issues of significance to women, such as reproductive health and autonomy, in a torts course as well as the gender impact of tort doctrines); Margo Schlanger, *Gender Matters: Teaching a Reasonable Woman Standard in Personal Injury Law*, 45 ST. LOUIS U. L.J. 769 (2001) (discussing the historical perspective of gender and torts and whether women are to be judged by the reasonable man standard, the reasonable woman standard, or something in between).

175. *See* Leslie Bender, *An Overview of Feminist Torts Scholarship*, 78 CORNELL L. REV. 575 (1993) ("Tort law cries out for feminist insights, methodologies, critiques and reconstructions."). *See also* Carl Tobias, *The Case for a Feminist Torts Casebook*, 38 VILL. L. REV. 1517, 1518-19 (1993) ("Professor Bender is absolutely correct in urging that feminist legal theoreticians apply feminist 'insights, methodologies, critiques, and reconstructions' to all of the specific areas of tort law. . . . The broad spectrum of doctrinal law is illustrative. Every substantive area and particular doctrine has its own history, theory, justification, practice, understanding and application, each of which feminist reexamination, rethinking and reworking could improve."); Gary T. Schwartz, *Tort Law: Feminist Approaches to Tort Law*, 2 THEORETICAL INQ. L. 211 (2001) (describing and evaluating feminist torts scholarship from a torts-centered, as opposed to feminist-centered, perspective); Assaf Jacob, *Tort Law: Feminist Approaches to Tort Law Revisited – A Reply*

believes that "the law of torts is particularly well suited to the inclusion of gender issues because it grapples with fundamental concerns of human life: the definition of needs and experiences we want our society to value, the ways we want to relate to each other, and how we want the legal system to treat our relationships and their disruptions."[176]

Chellie continued, "Throughout the semester, Professor Twist will address a number of topics in the torts arena that are of great importance to women's lives: reproductive torts, sexual harassment, intrafamilial violence, products that have harmed women (such as DES, the Dalkon Shield, oral contraceptives, bendectin, and breast implants),[177] intraspousal immunities, loss of consortium, matters of physical security and vulnerability (public duty doctrine), and damages.[178] Each of these topics will allow you to explore how notions of gender roles and the valuation of women's activities influence the content of the law, and how the law can have differential impacts on people according to their gender.[179] One of the requirements in Professor Twist's course is the completion of one-page assessments called Reactions.[180] A reaction requires you to reflect on your reading assignments for particular topics and then formulate questions that can be raised in class.[181] In my case, some of the reading assignments really troubled me, and I found myself 'reacting' to the content of the materials. By sitting down and reflecting on the reading materials, I found that I was better prepared to convey my viewpoints and interpretations of the readings during our class meetings."

Chellie's presentation also provided us with a brief introduction to gender bias in the "reasonable person standard," as well as other tort standards. "As you study Torts, you will find that the 'reasonable person standard' permeates tort law.[182] Professor Twist will initially approach this subject by asking: 'Who is this reasonable person?'[183] She will point out

To Professor Schwartz, 2 THEORETICAL INQ. L. 175 (2001) (responding to Schwartz's article in relation to the "reasonable man" and "reasonable woman" standard, and the [no] duty to rescue rule).

176. Finley, *supra* note 174, at 42.

177. *See generally* Bender, *supra* note 175, at 590; Tobias, *supra* note 175, at 1520; Carl Tobias, *Gender Issues and the Prosser, Wade, and Schwartz Torts Casebook*, 18 GOLDEN GATE U. L. REV. 495 (1988) [hereinafter Tobias, *Gender Issues*] (exploring and criticizing the treatment of gender issues in a leading torts case book).

178. *See* Finley, *supra* note 174, at 44; Bender, *supra* note 175, at 575; Tobias, *supra* note 175, at 1517; and Tobias, *Gender Issues*, *supra* note 177, at 500-01.

179. Finley, *supra* note 174, at 44.

180. Bernstein, *supra* note 170, at 223.

181. *Id.*

182. Finley, *supra* note 174, at 57 ("This traditional standard is an example of the supposedly neutral rule which may actually be suffused with the male perspective and with notions of the male ideal."). *See also* CAROLINE A. FORELL & DONNA M. MATTHEWS, A LAW OF HER OWN: THE REASONABLE WOMAN AS A MEASURE OF MAN (2000).

183. Finley, *supra* note 174, at 57.

that at one time this standard was referred to as the 'reasonable man.'[184] Professor Twist uses a number of cases, in connection with this standard, to illustrate that this purportedly objective 'reasonable person standard' may actually be subjective due to its use of biased stereotypes and its failure to include a variety of perspectives and experiences.[185] There was one example that's amazing but at the same time illustrates this bias. Professor Twist handed out a case entitled *Fardell v. Potts* from A.E. Herbert's collection of fictitious humorous cases, *Uncommon Law*.[186] In this case, the defense attorney argued that his client, a woman, could not be subject to tort liability because the tort standard of a 'reasonable man' could not possibly have been applied to her, since there is no such thing as a 'reasonable woman.'[187] The court agrees with this rationale and holds that there is no such thing as a 'reasonable woman!'[188] In the class you will also explore the gender bias resulting from the operations of stereotypes in the evaluations of emotional distress, nervous shock, harm to appearance, and the standard of slander per se for imputations and impurity to a woman."[189]

After her presentation, Chellie introduced Chris Hill, a third-year student who would be our tutor for Civil Procedure. I automatically took a liking to Chris's personality and energy. Chris described the Civil Procedure course as follows: "Throughout the course, Professor Curia exposed us to practice-oriented issues in Civil Procedure.[190] She used

184. *Id.* ("Due to increased sensitivity to the need for gender-neutral language, the standard was transformed into the seemingly more inclusive reasonable person."). *See also* Leslie Bender, *A Lawyer's Primer on Feminist Theory and Tort*, 38 J. LEGAL EDUC. 3 (1988) [hereinafter Bender, *Feminist Theory*]; Leslie Bender, *supra* note 175, at 575.

185. Finley, *supra* note 174, at 58-63 n.61-69 (discussing Tucker v. Henniker, 41 N.H. 317 (1860); State v. Wanrow, 88 Wash.2d 221, 559 P.2d 548 (1977); State v. Kelly, 97 N.J. 178, 478 A.2d 364 (1984); Rabidue v. Osceola Refining Co., 805 F.2d 611 (6th Cir. 1986); and O'Brien v. Eli Lilly, 668 F.2d 704 (3d Cir. 1981)).

186. Finley, *supra* note 174, at 58 n.60 ("This case can be used in class to discuss the implications for women of this satirical attitude, particularly the gender stereotypes which underlay the reasonable man standard. The case raises an important point about the extent to which the societal stereotype of women as unreasonable and overly emotional could actually infect the judgments about a woman's conduct. Application of a standard based on male stereotypes means that women are to be evaluated against a standard that was not designed with them in mind and which thus does not reflect their experiences and capabilities.").

187. *Id.* at 58.

188. *Id.*

189. *See id.* at 65-66.

190. Margaret M. Russell, *Beginner's Resolve: An Essay on Collaboration, Clinical Innovation, and the First-Year Core Curriculum*, 1 CLINICAL L. REV. 135, 145-46 (1994) ("First-year students in civil procedure (or any other course, for that matter) stand to benefit greatly from early and regular exposure to practice-oriented issues."). *See also* Dana Raigrodski, *Breaking Out of "Custody": A Feminist Voice in Constitutional Criminal Procedure*, 36 AM. CRIM. L. REV. 1310 (1999) (discussing the "custody" standard as set out in Miranda v. Arizona giving a feminist perspective to constitutional criminal procedure in practice).

quasi-clinical materials chronicling the progress of one lawsuit from the initial client interview through trial. This gave us the opportunity to learn the 'black-letter' concepts such as discovery and summary judgment in the context of a rich factual record of lawyer-client interactions and drafting exercises.[191] We usually completed the drafting exercises during class, which helped me to feel as if I was an active participant in class.[192] Professor Curia asked us to draft portions of complaints and answers, and we critiqued poorly drafted pleadings in light of the applicable rules.[193] However, one of the most interesting aspects of the course was when Professor Curia provided examples of how jurisdiction is linked to gender."[194]

At this point in Chris's presentation, one of my classmates raised her hand in the air with enthusiasm and asked, "Chris, could you give us some examples of topics that were discussed in relation to jurisdiction and gender?" Chris gladly responded to the request. "Throughout the class periods that followed, Professor Curia also examined an aspect of history with us — the fact that married women were, until relatively recently, without the capacity to litigate in federal or state courts.[195] We also studied the 'domestic relations exception' to diversity jurisdiction and raised questions relating to the assumptions that locate family issues as naturally

191. Russell, *supra* note 190, at 145. *See also* Schultz, *supra* note 129, at 67-68 ("Using litigation documents can enhance the teaching of procedure courses."); James Jay Brown, *Forging An Analytic Mind: The Law School Classroom Experience*, 29 STETSON L. REV. 1135 (2000) (discussing goals of classroom, the role of the student and the role of the professor in meeting the challenges of the first year law school educational experience); Cooney & Epstein, *supra* note 128.

192. Shultz, *supra* note 129, at 67 & n.43 ("The goal of getting students actively involved in their education can be met in many ways. One of the simplest is by asking them to write regularly. Such writing can be as simple as an in-class writing exercise from which the professor may select samples for analysis and discussion. Students can draft parts of a contract or pleading . . . Through these exercises, students are apt to discover the reciprocal relation between writing and thinking.").

193. *Id.* at 68.

194. *See* Judith Resnik, *Revising the Canon: Feminist Help in Teaching Procedure*, 61 U. CIN. L. REV. 1181 (1993) [hereinafter Resnik, *Revising the Canon*] (examining the use of the preemptory challenge to sexually stereotype and exclude women from the jury); Roy L. Brooks, *Feminist Jurisdiction: Toward an Understanding of Feminist Procedure*, 43 U. KAN. L. REV. 317 (Jan. 1995) ("The woman question should be applied to the modern constitutional formula for personal jurisdiction — traditional notions of fair play and substantial justice. Specifically, how might one who believes in gender sameness (i.e., a symmetrical model of sexual equality: assimilation or androgyny) or one who advocates gender difference (i.e., an asymmetrical model of sexual equality: special rights, accommodation, empowerment or acceptance) apply the women question to the jurisdictional formula?"); Judith Resnik, *"Naturally" Without Gender: Women, Jurisdiction, and the Federal Courts*, 66 N.Y.U. L. REV. 1682 (1991) [hereinafter Resnik, *"Naturally" Without Gender*] (exploring the relationship between women and the federal courts and the role that gender plays in allocation of work between state and federal courts). *See also* Barbara Allen Babcock, *A Place in the Palladium: Women's Rights and Jury Service*, 61 U. CIN. L. REV. 1139 (1993).

195. Resnik, *Revising the Canon*, *supra* note 194, at 1184 n.20-21.

within the work of state courts and the assumptions that locate women particularly within the family.[196] Professor Curia set aside a portion of one of her lectures to discuss how women fare as litigants in the courtroom.[197] I also learned that the doctrine of personal jurisdiction can be linked to gender.[198] Professor Curia critiqued personal jurisdiction using feminist critical theory and her lectures increased my awareness of the gender implications of the traditional rules and decision-making process governing personal jurisdiction law."[199]

The last student tutor to speak was Robin Hood, a second-year law student who would be our tutor for Criminal Law. She started her description of the course by stating: "This course will challenge you on an intellectual, personal, and emotional level. Professor Outlaw concentrates on topics of particular concern to women in illuminating the fundamental doctrines in criminal law."[200] Robin then provided a detailed description of two of the units of materials that would be covered during the semester.

She began by describing the first unit of the course, involving spousal violence that included battering by spouses and self-defense by battered spouses.[201] "In this first unit, you will study cases involving domestic violence and homicide committed by battered women. This will give you the opportunity to learn the fundamentals of homicide and discuss the defenses of insanity, diminished capacity, and provocation, justification,

196. *Id.* at 1188 n.36.

197. *Id.* at 1187-91 ("Women are in the federal courts, and the fact of family status does not define us as litigants.... [W]e who teach procedure can talk about the data developed from the gender, ethnic and race bias task forces, of the problems that women of all colors have as litigants in courtrooms across the nation.... [F]eminist proceduralists must consider how women actually fare as litigants, and whether rules of evidence and procedure respond to the documented disabilities that women still face.").

198. *See* Brooks, *supra* note 194.

199. *Id.* at 346-62 (applying critical feminist theory to Kulko v. Superior Court, 463 U.S. 84 (1978) and Burnham v. Superior Court, 495 U.S. 604 (1990) (two domestic relations cases) to demonstrate that feminist values can have tangible consequences on the daily operation of personal jurisdiction).

200. *See* Nancy S. Erickson, *Final Report: "Sex Bias in the Teaching of Criminal Law,"* 42 RUTGERS L. REV. 309 (1990) [hereinafter Erickson, *Final Report*]; Nancy S. Erickson, *Sex Bias in Law School Courses: Some Common Issues*, 38 J. LEGAL EDUC. 101, 104-05 (1988) [hereinafter Erickson, *Common Issues*] ("Topics of particular concern for women" can be broken-down into the following units: (1) Spousal Violence (battering by spouses, self-defense by battered spouses, homicide by battered spouses); (2) Sexual Assault (rape, marital rape, rape of males/rape by females, statutory rape); (3) Criminal Law and the Marital Relationship (spousal conspiracy and marital duress); and (4) Other Topics of Concern (abortion, the "reasonable man standard," pornography, prostitution, failure to act (parental duty of care for the child), spouse's misconduct as provocation.); Nancy S. Erickson & Mary Ann Lamanna, *Sex-Bias Topics In the Criminal Law Course: A Survey Of Criminal Law Professors*, 24 U. MICH. J.L. REFORM 189 (1990) (reporting on the results of a survey investigating sex bias in the teaching of criminal law where the survey consisted of reviewing commonly used criminal law books, and a providing a questionnaire for all professors teaching criminal law during the time of the survey).

201. *See* Erickson, *Final Report*, *supra* note 200, at 328-33.

and excuse.[202] What is so great about this unit is that Professor Outlaw starts by having women from the local battered women's shelter come to class and share their stories. As you read the cases in the unit, you will remember listening to real people talk about their real experiences with domestic violence — the strangers in the cases will seem very real to you.[203] At the end of the unit, Professor Outlaw will arrange a half-day field trip to a women's prison. You might listen to a woman tell her story about how she was battered for many years by her spouse and later was convicted of homicide for killing him."

The second unit Robin described covered sexual assault.[204] "Again, Professor Outlaw will arrange with a local organization that provides services to survivors of sexual assault to have survivors come to your class and share their experiences." I remember Professor Outlaw telling us on Monday that we would have a guest speaker day on Friday as an introduction to the unit on Sexual Assault and that she would be handing out a packet of reading materials that would be used for a class exercise the following week.[205] She said that the guest speakers would be survivors of sexual assault.[206] When Friday arrived, I walked into the classroom and saw that there were two individuals in the front of the room — a woman and a man. The guest speakers introduced themselves. The first speaker was a young female — an undergraduate at a neighboring co-ed university who was raped during her sophomore year of college by a male who had been one of her best friends during her freshman year.[207] The second speaker was a male in his mid-thirties who had served time in prison and described himself as a heterosexual male who was a survivor of homosexual rape.[208]

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202. *Id.* at 334.

203. *See* Menkel-Meadow, *supra* note 128, at 80 ("It is not uncommon for feminist teachers to make real the actual human condition of the parties in the cases. . . . [L]earning the law from a feminist perspective includes a real, concretized, contextualized and experiential dimension.").

204. See Erickson, *Final Report*, *supra* note 200, at 339-94.

205. A professor must consider that some of her students in class may be victims of sexual assault. *See* Kate E. Bloch, *A Rape Law Pedagogy*, 7 YALE J. L. & FEMINISM 307, 330 n. 103-04 (1995) (In an analysis of the "unintentional silencing of rape or sexual assault survivors that often occurs when instructors or students introduce the subject of rape or sexual assault to classes of undergraduates," Professor Amanda Konradi noted that one impediment to survivors' participation in class discussion occurred "when sexual assault was not introduced adequately and appeared to emerge from nowhere." In this situation, "survivors reported being 'mentally unprepared' to deal with the subject.").

206. *See* Erickson, *Common Issues*, *supra* note 200, at 114-15 ("The truth about rape can only be learned by listening to its victims.").

207. *See* Susan Estrich, *Teaching Rape Law*, 102 YALE L.J. 509, 512-13 (1992) (About teaching rape: "I don't spend much time on strangers who jump from the bushes and rape women at knife point. . . . I like to teach cases where there are no guns or knives, no lacerated vaginas or burnt breasts. I teach cases about men and women who met in bars, or used to date, or were platonic friends in college.").

208. *See* Erickson, *Common Issues*, *supra* note 200, at 114 ("One criminal law

Robin said that listening to the guest speakers that day was truly a learning experience: "I went to my room that evening and called one of my friends who is attending a co-ed law school. Our ritual on Thursday nights was to compare experiences in our first-year courses. After telling her about the guest speaker day in my Criminal Law class, my friend revealed that her Criminal Law professor was not going to be covering the topic of rape in her class."[209]

Robin then briefly described the "student-as-legislator" approach that Professor Outlaw has adopted in teaching rape.[210] "Professor Outlaw told the class that we were all going to assume the roles of elected legislators charged with drafting criminal statutes covering sexual assault crimes for a local jurisdiction.[211] She then handed out a packet of materials for the exercise that served as background reading relating to the crime of rape and rape law — the selections in the packet included cases covering diverse populations of litigants and situations involving rape, newspaper clippings, stories of victims, and so on.[212] We were assigned to small groups that were expected to create a first draft of a rape law statute.[213] Throughout the week, we assumed the role of legislators, explored various combinations of language that could be used to draft statutes criminalizing rape, voiced the consequences and reasons favoring or disfavoring the adoption of various statutory combinations, and then voted to decide which statutes to

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teacher [has] suggested . . . to begin the section of rape with a case involving a heterosexual male rape victim); James J. Tomkovicz, *On Teaching Rape: Reasons, Risks and Rewards*, 102 YALE L.J. 481, 490 (1992) (In concluding his discussion of rape with a point stating that statistically the vast majority of sexual assaults were committed by men upon women and that gender neutrality would not have a substantial practical impact, a female student in his class declared that she took issue with the implication that protecting men against sexual assaults by other men was unimportant.); Bloch, *supra* note 205, at 320.

209. *See* Tomkovicz, *supra* note 208, at 84 (discussing the professional risks and the personal risks to both the professor and the student in teaching rape).

210. *See generally* Bloch, *supra* note 205, at 309 (proposing a "student-as-legislator" approach as a method for facilitating the study of rape law).

211. *See id.* at 326-27 & n.88-90 ("In published literature on education, authors extol the virtues of role play as a teaching vehicle. . . . [E]ducators explain: 'Role play offers students the opportunity and the courage to 'step out' of themselves and try new roles.' . . . 'Role play fosters the development of initiative, risk-taking and tolerance for complexity and ambiguity."). "[T]he legislative method is an interactive participatory conversation, one that invites inclusion of context and narrative. . . . [T]he limited distance provided by role assumption in the legislative method is not designed to render the ensuing discussion abstract and severed from context. . . . [T]his space provides a forum for inclusion of narrative and contextual discourse without the requirement that the speaker claim the narrative as his or her own. In this way, the legislative approach invites a range of perspectives and methods of communicating those perspectives." *Id.* at 330.

212. *Id.* at 314, 335 ("[T]he reading selection is vital to the success of the enterprise. . . . Selections that expose students to views different from their own, or validate experiences that have traditionally been marginalized, can spur greater involvement from students who might otherwise remain silent.").

213. *Id.* at 315 ("Providing students with the option of developing these drafts singly or in groups stimulates collaborative learning.").

enact."[214]

Just as I found myself wanting to hear more details about the student-as-legislator approach, Robin exclaimed, "That is all that I am going to tell you about the approach, but I will tell you what I gained from participating in the exercise. I gained an appreciation for the complexities that accompany drafting effective and clear legislation, as well as the hazards of statutory construction.[215] The exercise also raised evidentiary, constitutional, ethical, and trial strategy issues, which provided me with the exposure to the interdependence of policy and legal thought.[216] Equally important, I learned how to adopt a position on an issue that was emotionally charged and employ speech that was aimed at persuading an audience."[217]

Robin continued, "After the last day of the exercise, I was talking with one of my classmates who is a survivor of sexual assault. She revealed that at the beginning of the sexual assault unit, she found that she was reluctant to participate in class discussions for fear of being identified as the sexual assault victim of the class. She said that the exercise gave her the freedom to present her perspective without claiming it as her own."[218]

The final presentation of the day was delivered by Lynn Markmaker, the director of the career placement office in the American All-Women's Law School. She stated, "I am sure most, if not all of you, are excited and want to get started with your coursework. At the same time I'm sure you feel somewhat overwhelmed trying to digest all of the information that you have received today. I want to stress that the American All-Women's Law School is about more than just coursework. I would like to take this time to briefly introduce you to the world outside of your law school courses."[219]

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214. *Id.* at 318-21.

215. *Id.* at 310, 336.

216. Bloch, *supra* note 208, at 337.

217. *Id.* ("Role assumption represents a critical component of lawyering. Assuming the role of an effective legislator requires students to consider how to persuade others of a particular viewpoint. Effective legislators, like effective lawyers, marshal the facts and arguments supporting their position and mold their discourse to appeal to the given audience. Role assumption encourages students to consider and practice the techniques of effective rhetoric.").

218. *Id.* at 330-31 (with role play, a survivor of sexual assault can participate in the exercise without claiming that the perspective that she shares results from her personal history. Role permits the inclusion of a multiplicity of perspectives without requiring a personal claim. The legislative method can elicit speech where silence may have reigned). *See also* Stephanie M. Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. LEGAL EDUC. 147, 152 (1988) ("Role playing provides a distancing function, allowing students to separate their personal identity from their words, a separation paralleling that of an attorney representing a client.").

219. *See* Jill Chaifetz, *The Value of Public Service: A Model for Instilling a Pro Bono Ethic in Law School*, 45 STAN. L. REV. 1695 (1993) (In the last few years, the controversy over institutional support for public interest work has been centered on whether or not schools should institute mandatory pro bono programs). By making pro bono work mandatory, law schools: (1) "'legitimize' work for the poor and underrepresented by

Lynn continued, "Because not all students live at the school and first-years have classes separate from second- and third-year students, efforts are made to encourage relationships between the students. Peer mentoring programs between students, as well as faculty mentoring of students are key elements of the educational process at this school. You will also have the opportunity to become involved in a wide variety of extracurricular activities such as: (1) student groups like Women's Law Forum or the Lesbian/Bisexual Law Students Group; (2) the All-Women's Law Review which focuses on issues that involve topics such as gender, class, race, and sexual orientation; or (3) the All-Women's Moot Court Team.[220] Further, what you learn in your courses is not confined to classroom walls. Students at our school are required to engage in pro bono projects with non-profit organizations, with state and federal courts, with government and international agencies, with your law school professors on non-scholastic legal issues, or with private law firms on their pro bono dockets.[221] You will all be encouraged to coordinate school-sponsored programs, conferences, and matters of concern to women and the community at large."

Ms. Markmaker went on to discuss activities sponsored by the career placement office throughout the year: "The goal of the staff at this school's

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making support for such work manifest;" (2) "supplement students' learning about professional responsibility;" and (3) provide students with the opportunity to benefit from a valuable learning experience with real-life cases. *Id.* at 1709. However, "many institutional obstacles block development of mandatory pro bono programs." *Id.* at 1710. One of the biggest obstacles "is the allocation of monies to run such programs. Many schools lack either the resources or the will to invest the sums required for mandatory pro bono programs." *Id.* at 1710 & n.76-77. If the schools choose to implement mandatory pro bono requirements, phonathons or other fundraising strategies could easily be utilized to help meet the school's financial responsibilities.

220. *See* Mairi N. Morrison, *May It Please Whose Court?: How Moot Court Perpetuates Gender Bias In the 'Real World' Of Practice*, 6 UCLA WOMEN'S L.J. 49, 54-55 (1995) ("By passively allowing its training goals to be shaped by the gender-biased world of practice, law schools perpetuate the existing system. Students are taught to excel in the traditional, linear, rational, dispassionate, and "male" style of argument within the larger context of an adversarial, one-winner system.").

221. *See* OSB REPORT, *supra* note 52 (claiming female professors do more mentoring than men). *See* Rebecca A. Cochran, *Legal Research and Writing Programs As Vehicles For Law Student Pro Bono Service*, 8 B.U. PUB. INT. L. J. 429 (1999) (arguing that legal research and writing classes are a good forum for introducing pro bono work into the law school curriculum); Deborah L. Rhode, *Cultures Of Commitment: Pro Bono For Lawyers and Law Students*, 67 FORDHAM L. REV. 2415, 2418 (1999) (discussing the effectiveness of law schools' pro bono programs in fostering a "culture of commitment to pro bono services" and how to increase that effectiveness); Reed Elizabeth Loder, *Tending the Generous Heart: Mandatory Pro Bono and Moral Development*, 14 GEO. J. LEGAL ETHICS 459 (2001) (discussing methods to invigorate the current, voluntary model, rather than changing to a mandatory model, of pro bono service by lawyers); Christina M. Rosas, *Mandatory Pro Bono Publico For Law Students: The Right Place to Start*, 30 HOFSTRA L. REV. 1069, 1078 (2002) (arguing that mandatory pro bono for law students will increase their dedication to pro bono work after graduation and will enrich the students both personally and professionally).

career placement office is to increase your awareness of the options available to you in the job market when you graduate. This way you can make informed decisions about your professional life and at the same time fulfill your commitment to home and family life if you have, or plan to have, a family.[222] We will conduct a variety of informational seminars focusing on issues of importance to women, such as the nature of the problems faced by women in large firms,[223] the dual problems of caregiving responsibility[224] outright discrimination,[225] the pressures placed

222. *See* Elizabeth S. Foster, *The Glass Ceiling in the Legal Profession: Why Do Law Firms Still Have So Few Female Partners?*, 42 UCLA. L. REV. 1631, 1650-51 n.88-91 (1995) ("The fact is that for women, choices are still not very many. You can decide never to have a family, but you have to live with that decision. If you make the choice to try to have a family, you are going to have to work harder than anyone else . . . Women feel caught between the brass ring and the biological clock . . . Female attorneys typically fall into one of two patterns, both of which hamper equal progress and preclude job satisfaction. The first and predominant is that of assimilation to the dominant one-dimensional paradigm . . . which demands [total immersion in and devotion to work, with all other considerations (home, family, and personal life)] rendered secondary. The second pattern is alteration of this paradigm to accommodate the multi-dimensional requirements of home, family, and personal life. Both patterns perpetuate the glass ceiling."); Nancy L. Farrer, *Of Ivory Columns And Glass Ceilings: The Impact Of The Supreme Court of the United States On the Practice of Women Attorneys in Law Firms*, 28 ST. MARY'S L.J. 529 (1997) (analyzing future possibilities for women in large firms with a historical perspective on Supreme Court cases brought by women attorneys alleging sex discrimination at their firms).

223. *See* Foster, *supra* note 222, at 1651-54 (discussing the number of billable hours required in large law firms and the difficulties women face in assimilating to the large firm atmosphere); James J. Alfini and Joseph N. Van Vooren, *Is There A Solution to the Problem of Lawyer Stress? The Law School Perspective*, 10 J.L. & HEALTH 61 (1995-96) (discussing the pressures which contribute to increased lawyer dissatisfaction and stress); Lorraine Lezama, Book Review, 18 HARV. WOMEN'S L.J. 340, 341 (1995) (reviewing MONA HARRINGTON, WOMEN LAWYERS: REWRITING THE RULES (1994)) (Of the "obstacles which individually and cumulatively conspire to prevent . . . women from assuming positions as full figures of authority within the legal profession[,] . . . established rules and large firm culture are perhaps the most formidable. The written and unwritten rules determine who is admitted to the privileged world of the law. Yet their inflexibility, focus on billable hours, and culture of aggression and competition make accommodating the schedule of most women impossible, especially if the women have families. The cultural codes within these same firms leave women invisible and inaudible by positioning them as outsiders and rejecting them as members of the club. Women, in their look, style, sound, and manner cannot meet the male standards of the firm."). *See also* Judith S. Kaye, *Women Lawyers in Big Firms: A Study in Progress Toward Gender Equality*, 57 FORDHAM L. REV. 111 (1988); Nancy J. Reichman & Joyce S. Sterling, *Recasting the Brass Ring: Deconstructing and Reconstructing Workplace Opportunities for Women Lawyers*, 29 CAP. U. L. REV. 923, 927 (2002) (arguing that the "choices" women make to work fewer hours or to take a lateral move may be just as much about feeling "pushed away" from work as it is about "feeling pulled toward family.").

224. *See* Rebecca Korzec, *Working On The "Mommy-Track": Motherhood and Women Lawyers*, 8 HASTINGS WOMEN'S L.J. 117, 117-18 (1997) ("Childrearing continues to be viewed primarily as 'mother's work' even if 'mother' happens to be a lawyer. [M]otherhood, actual or potential, exacts significant career costs for women lawyers . . . and complicates women lawyer's daily lives in numerous ways: pregnancy disability, maternity leave, childcare concerns, and the demanding 'second shift' of housework at the end of the

on a typical lawyer,[226] which firms are worker friendly,[227] how to transform work environments,[228] and non-traditional legal careers."

After the professors and tutors had spoken to us about the first semester, I felt a sense of peace that I had made the right decision to attend the American All-Women's Law School. The first-year courses were going to be challenging and interesting: they would allow space for my own personal development and for my development as a law student.

I leafed through the catalog of courses I had received when I was accepted to the American All-Women's Law School. "Aren't you tired of this yet?" I asked myself after an entire day of presentations on my first-year curriculum. However, I was amazed to find myself neither tired nor bored, but rather curious to know what courses I would take during my second and third years of law school. Scanning the pages of the catalog indicated that my professors would be teaching required courses such as Privacy, Property, and Gender[229] and A Feminist Perspective of

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traditional work day."). *See also* Foster, *supra* note 222, at 1631; Robert L. Nelson, *The Futures of American Lawyers: A Demographic Profile of a Changing Profession in a Changing Society*, 44 CASE W. RES. L. REV. 345, 380 (1994) ("Numerous studies report that female attorneys who are married and have children bear primary responsibility for childcare.").

225. *See* Korzec, *supra* note 224, at 120 n.20-21 ("The [1988 ABA Commission on Women and the Profession] report concludes that female lawyers face discrimination in law firms in a number of aspects. This discrimination includes the absence of mentoring relationships, assignments to subsidiary roles in cases, exclusion from firm discussions and professional socialization, a lack of responsiveness to the necessity of meeting domestic caretaking responsibilities, and the requirement of billing some twenty-five hundred hours per year.").

226. *See* Foster, *supra* note 222, at 1636 n.16 ("The legal profession operates, to a large degree, based on a paradigm whose central tenet is a one-dimensional model of total career devotion. This is evidenced by the profession's emphasis on maximizing billable hours, maintaining full availability to clients, investing time in rainmaking, and climbing the ladder to partnership regardless of the degree of intrusion on one's personal life."); Alfini & Van Vooren, *supra* note 223 (discussing the pressures which contribute to increased lawyer dissatisfaction and stress).

227. *See* Foster, *supra* note 222, at 1687-88 (discussing the trend in women choosing to establish female-run firms); Gina S. Anderson, *Rx for Law Firms: Shatter the Glass Ceiling*, 212 N.Y.L.J. 2 (1994).

228. *See* Korzec, *supra* note 224, at 135-38 (discussing gender-neutral models for law practice and the importance of adopting gender-neutral policies); Linda Marks, *Alternative Work Schedules: It's About Time!*, 35 N.Y.L. SCH. L. REV. 361 (1990) (providing an excellent discussion of some real, practical alternatives that employers can make available for women and men in the lawyering workplace); Seidenberg, *supra* note 9, at 849 (suggesting that in addition to joining a small firm, contracting out services and working as legal aid student should explore teaching, and other non-traditional careers); Alfini & Van Vooren, *supra* note 223, at 62-64. *See also* Michelle A. Travis, *Telecommunicating: The Escher Stairway of Work/Family Conflict*, 55 ME. L. Rev. 261 (2003) (discussing growing use of home offices and telecommunications as a way to balance family and work demands).

229. *See* John D. Johnston Jr., *Sex & Property: The Common Law Tradition, The Law School Curriculum, and Developments Toward Equality*, 47 N.Y.U. L. REV. 1033 (1972) (arguing for the inclusion of marital property law in the law school curriculum and

Constitutional Law.[230] "Ah, it looks like I will also be required to complete an upper-level Professional Responsibility course before graduation," I mumbled to myself.[231] I then noticed some additional feminist law-related courses, elective courses such as Family Law and the New Millennium,[232] Sex and Power, [233] Feminist Reflections on Corporate Law,[234] Tax and the

examines the function of sex stereotypes in shaping the treatment of the common law property rights of married persons); Judith T. Younger, *Community Property, Women and the Law School Curriculum*, 48 N.Y.U. L. REV. 211 (1973) (evaluating community property treatment of married women and how these issues should be presented in law school property courses); Ann Bartow, *Our Data, Ourselves: Privacy, Properitization, and Gender*, 34 U.S.F. L. REV. 633 (2000) (suggesting that individuals should have the same property rights in our names and personal information that corporations have in theirs).

230. *See* Mary E. Becker, *Obscuring the Struggle: Sex Discrimination, Social Security, and Stone, Seidman, Sunstein & Tushnet's Constitutional Law*, 89 COLUM. L. REV. 264 (1989) (criticizing constitutional law casebooks that obscure inequality between the sexes in their discussions of the social security system); Karin Mika, *Self-Reflection Within the Academy: The Absence of Women in Constitutional Jurisprudence*, 9 HASTINGS WOMEN'S L.J. 273, 274, 312 (1998) (claiming that "legal education has failed to represent significant contributions of women in our American legal heritage within its curriculum" and that legal educators "must rethink their roles in reflecting the realities of the time and remedying the shortsightedness of their predecessors who would not rise above the societal prejudice of their time.").

231. The American All-Women's Law School will provide students with an introduction to professional responsibility issues in their first year, through discussion in their Introduction to Legal Research, Writing, and Skills course. Upper-level students will then take a required course that gives substantive attention to professional responsibility issues. Further, the professors will integrate professional responsibility issues into core courses and the school will organize special supplemental events such as panels, lectures etc. addressing professional responsibility issues. *See* Rhode, *supra* note 145 (advocating not only a separate course on ethics but a topic to be addressed throughout the curricula).

232. *See, e.g.*, Mary Becker, *Maternal Feelings: Myth, Taboo, and Child Custody*, 1 S. CAL. REV. L. & WOMEN'S STUD. 133 (1992) (assessing custody standards at divorce in light of the differences between the relationship of mothers and their children and the relationship of fathers and their children, advocating a "maternal defense" standard to replace the current "best interests of the child" standard); Naomi R. Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 VAN. L. REV. 1041 (1991) (critiquing the exclusion of domestic violence from the child care custody, demonstrates its relevance in such cases and suggests that state courts and legislatures should make parental violence an explicit consideration for child custody); Martha Minow, *"Forming Underneath Everything That Grows": Toward a History of Family Law*, 1985 WIS. L. REV. 819 (1985) ("critiques the traditional family law history presented in legal casebooks and treatises, and outlines an alternative history"); Twila L. Perry, *The Transracial Adoption Controversy: An Analysis of Discourse and Subordination*, 21 N.Y.U. REV. L. & SOC. CHANGE 33, 37 (1993-94) (examining "the *ways* in which transracial adoption is discussed and how this discussion affects the children who may be adopted and the communities from which they come."); Merle H. Weiner, *"We Are Family": Valuing Associationalism in Disputes Over Children's Surnames*, 75 N.C. L. REV. 1625 (1997) (discussing the implications on family associationalism regarding whether the children of divorce retain their mother's or their father's surname).

233. Noëlle Lenoir, *The Representation of Women in Politics: From Quotas to Parity in Elections*, 50 INT'L & COMP. L.Q. 217 (2001) (focusing on the French system with the evolution of women's representation in the government — from quotas to parity and the contrast with the system in the United States); Miriam G. Cedarbaum, *Women on the Federal Bench – A Progress Report*, 10 COLUM. J. GENDER & L. 23 (2000) (reporting the

Transformation of Capitalist Society,[235] Gender Discrimination and the Transformation of the Workplace,[236] Ecofeminism and Environmental

increasing numbers of women on the federal bench); Roger E. Hartley, *Senate Delay of Minority Judicial Nominees: A Look At Race, Gender and Experience*, 84 JUDICATURE 190 (2001) (examining the evidence that minority and female nominees to the federal bench are confirmed more slowly than their male counterparts).

234. *See, e.g.*, Gabaldon, *supra* note 84 (a feminist critique of the construct of limited liability for corporate shareholders entrenched in American law); Katherine H. Hall, *Starting from Silence: The Future of Feminist Analysis of Corporate Law*, 7 CORP. BUS. L.J. 149 (1994) (the article shares the great potential for feminist analysis in (1) corporate law scholarship, (2) the conceptual foundations of the corporation, (3) specific corporate law principles, and (4) the effect of corporate law upon women); Kathleen A. Lahey & Sarah W. Salter, *Corporate Law in Legal Theory and Legal Scholarship: Form Classicism to Feminism*, 23 OSGOODE HALL L.J. 543 (1985) (after identifying the lack of feminist analysis of corporate law in Canada, authors analyze examples of academic work within the theoretical constructions of classicism, realism, reconstructors, and oppositimalists); Ramona L. Paetzold, *Commentary: Feminism and Business Law: The Essential Interconnection*, 31 AM. BUS. L.J. 699 (1994) (criticizing Mary Joe Frug's casebook WOMEN AND THE LAW, which is organized into work, family, and body. Misses important aspects of business law and fails to demonstrate that the entire legal system needs to be revised.)

235. *See* Nancy E. Shurtz, *Critical Tax Theory: Still Not Taken Seriously*, 76 N.C. L. REV. 1837 (1997-98) (discussing the criticism of feminist and critical race tax scholarship and making suggestions about critical tax scholarship for the future); Beverly I. Moran & William Whitford, *A Black Critique of the Internal Revenue Code*, 1996 WIS. L. REV. 751, 753 (1996); John A. Powell, *How Government Tax and Housing Policies Have Racially Segregated America, in* TAXING AMERICA 80, 83 (1996); Nancy E. Shurtz, *Gender Equity and Tax Policy: The Theory of "Taxing Men,"* 6 S. CAL. REV. L. & WOMEN'S STUD. 485 (1997); Grace Blumberg, *Sexism in the Code: A Comparative Study of Income Taxation of Working Wives and Mothers*, 21 BUFF. L. REV. 49 (1971); Mary L. Heen, *Welfare Reform, Child Care Costs, and Taxes: Delivering Increased Work-Related Child Care Benefits to Low-Income Families*, 13 YALE L. & POL'Y REV. 173 (1995); Marjorie E. Kornhauser, *The Rhetoric of the Anti-Progressive Income Tax Movement: A Typical Male Reaction*, 86 MICH. L. REV. 465 (1987); Gwen Thayer Handelman, *Sisters in Law: Gender and the Interpretation of Tax Statutes*, 3 UCLA WOMEN'S L.J. 39 (1993); Wendy C. Gerzog, *The Marital Deducation QTIP Provisions: Illogical and Degrading to Women*, 5 UCLA WOMEN'S L.J. 301 (1995); Wendy C. Gerzog, *Estate of Clack: Adding Insult to Injury, or More Problems with the QTIP Tax Provisions*, 6 S. CAL. REV. L. & WOMEN'S STUD. 221 (1996); Nancy C. Staudt, *Taxing Housework*, 84 GEO. L.J. 1571 (1996); Anne L. Alstott, *Tax Policy and Feminism: Competing Goals and Institutional Choices*, 96 COLUM. L. REV. 2001 (1996).

236. *See* Kathryn Abrams, *Gender Discrimination and the Transformation of Workplace Norms*, 42 VAND. L. REV. 1183, 1185 (1989) (discussing the inadequacy of the "equality principle" in challenging "male-centered attitudes that structure the workplace," suggesting an approach to handle sexual harassment and parenting, responsibilities on career advancement); Mary Becker, *How Free Is Speech at Work?*, 29 U.C. DAVIS L. REV. 815 (1996) (discussing Title VII and the First Amendment's protection of free speech in public and private employment; specifically addressing the issues of sexual harassment); Ruth Colker, *Pregnancy, Parenting, and Capitalism*, 58 OHIO ST. L. J. 61, 82, 83 (1997) (Unlike Canada and Western Europe, "United States law on pregnancy and childbirth is imbued in tenets of laissez-faire economics" passing on the costs of childbearing and child rearing to parents, especially female parents, and "endangering the welfare of our children."); David A. Strauss, *The Law and Economics of Racial Discrimination in Employment: the Case for Numerical Standards*, 79 GEO. L. J. 1619, 1657 (1991) (concluding that it is a mistake for employment law to focus on the specific acts of discrimination but rather should give

Law,[237] and Women and Globalization: The Failure and Postmodern Possibilities of International Law.[238] I noticed that I would take courses in leadership as well as complete an off-campus leadership externship.[239]

At this point, the meeting adjourned for the planned picnic with second- and third-year students. Refreshments were served by the faculty and staff of the American All-Women's Law School. In a very real sense it did feel as if I had found a new home. As I sat down to get acquainted with some of my fellow companions on this sojourn of sisterhood, I felt a warm tranquility I had seldom experienced. My state of nirvana proved quite temporary, however, dashed in an instant by a most disconcerting thought: "Gee, I hope they don't serve decaf."

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employers incentives to hire and promote minority groups in the proportion of their representation in the relevant population).

237. *See* Robert D. Bullard, *Environmental Justice for All: It's the Right Thing to Do*, 9 J.ENVT'L L. & LITIG. 281 (1994); Christopher C. Joyner & George E. Little, *It's Not Nice to Fool Mother Nature! The Mystique of Feminist Approaches to International Environmental Law*, 14 B.U. INT'L L. J. 223 (1996); Gerald Torres, *Environmental Justice: The Legal Meaning of a Social Movement*, 15 J.L. & COM. 597 (1996) (suggesting that the law focuses on requiring the employment of sufficient number of minorities rather than on detecting acts of discrimination by employers).

238. Barbara Stark, *Women and Globalization: The Failure and Postmodern Possibilities of International Law*, 33 VA. J. TRANSNAT'L L. 503 (2000) (examining the role of international law and, in particular, human rights law as it relates to women).

239. Daniel J. Givelbar, Brook K. Baker, John McDevitt, & Roby Miliano, *Learning Through Work: An Empirical Study of Legal Internship*, 45 J. LEGAL EDUC. 1, 3 (1995) (presenting "both theoretical and empirical support for a proposition that is as intuitively obvious as it is officially ignored: people in general learn by doing, and law students in particular learn legal artistry by doing legal work . . . [and thus] greater attention must be paid to the learning that inheres in the work"); Mary Jo Eyster, *Designing and Teaching the Large Externship Clinic*, 5 CLINICAL. L. REV. 347, 349-50 (1999) ("The advantages often ascribed to extern clinical programs include the lower cost of providing clinical experience; the range of different placements available; the greater similarity to the real world than is provided in in-house settings; and sometimes the greater skill and knowledge of the field supervisors."); Linda Morton, *Creating a Classroom Component for Field Placement Programs: Enhancing Clinical Goals with Feminist Pedagogy*, 45 MAINE L. REV. 19 (1993) (discussing author's own experiences of using feminist teaching methodology in a "field placement class").